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## Fast-Track Regulation Agency Background Document

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|---------------------------------------------------------------|-----------------------------------------------------|
| <b>Agency name</b>                                            | State Board of Social Services                      |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | 22VAC40-191                                         |
| <b>VAC Chapter title(s)</b>                                   | <i>Background Checks for Child Welfare Agencies</i> |
| <b>Action title</b>                                           | Amendments Resulting from Periodic Review 2023      |
| <b>Date this document prepared</b>                            | XXXX                                                |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The regulation *Background Checks for Child Welfare Agencies*, 22VAC40-191, establishes the minimum requirements for background checks for child welfare agencies, which enables licensees, employees, volunteers, prospective foster and adoptive parents, licensing inspectors, and other citizens of the Commonwealth to be knowledgeable of these requirements. The regulation is necessary to interpret the law and protect the safety and welfare of children under the control or custody of the child welfare agencies. This action will amend this regulation for clarification purposes and reduce regulatory burdens.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

DSS – Department of Social Services  
CSB – Community Services Board

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”*

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On XXXX, the Board of Social Services adopted final amendments to the *Background Checks for Child Welfare Agencies*.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

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Pursuant to § 2.2-4007.1 of the Code of Virginia, all regulations are required to be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law. Following a periodic review of the *Background Checks for Child Welfare Agencies*, the Department determined this regulation should be amended for technical and clarification purposes and to reduce regulatory burdens pursuant to Executive Order 19. The amendments are expected to be noncontroversial as the amendments will provide clarification, align with Virginia Code, and reduce regulatory burdens. Additionally, background checks for child welfare agencies are currently a requirement of Virginia Code.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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The State Board of Social Services has the legal authority to adopt regulations and requirements in accordance with §§ 63.2-217, 63.2-1723, and 63.2-1734 of the Code of Virginia. The Code mandates promulgation of regulations for the programs and facilities that are conducive to the safety and welfare of children under the control or custody of child welfare agencies.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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This action will amend this regulation as required by Executive Order 19 (2022). This regulatory change is essential to protect the health, safety, and welfare of children under the control or custody of child welfare agencies. This action will provide clarification to existing requirements, align the regulation with Virginia Code requirements, and reduce regulatory burden.

### Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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The amendment includes changes to clarify existing requirements and align with current Virginia Code requirements. The amendments will reduce regulatory burdens while maintaining the safety and welfare of children under the control or custody of child welfare agencies.

### Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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The primary advantage of this action to the public is reduced regulatory burdens and clarified requirements in this regulation. There are no disadvantages to the public from this action. There are no advantages or disadvantages to the agency or Commonwealth, as background checks are a current requirement for child welfare agencies.

### Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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There are no requirements that exceed the federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local*

*governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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#### Other State Agencies Particularly Affected

No other state agencies are affected by this action.

#### Localities Particularly Affected

No localities are affected by this action.

#### Other Entities Particularly Affected

There is one child placing agency operated by Highland CSB. The impact to this entity could be viewed as beneficial due to the reduction in regulatory burdens with this action.

### Economic Impact

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

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#### Impact on State Agencies

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| <i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:<br>a) fund source / fund detail;<br>b) delineation of one-time versus on-going expenditures; and<br>c) whether any costs or revenue loss can be absorbed within existing resources | There are no direct or indirect costs or benefits to DSS.                  |
| <i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.                                                                                                                    | There are no direct or indirect costs or benefits to other state agencies. |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce.                                                                                                                                                                                                                        | Clarification of existing requirements and reduction of regulatory burden. |

#### Impact on Localities

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

|                                                                                  |                                                                                   |
|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| Projected costs, savings, fees or revenues resulting from the regulatory change. | The impact on localities is indicated in Table 2 of the ORM Economic Review Form. |
| Benefits the regulatory change is designed to produce.                           | Clarification of existing requirements and reduction of regulatory burden.        |

#### Impact on Other Entities

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.                                                                                                                                                                                                                                                                                                                                                                                 | Child welfare agencies include licensed child placing agencies, licensed independent foster homes, and foster and adoptive homes approved by licensed child placing agencies. The child welfare agencies will be affected by this regulatory change. There is one licensed child placing agency operated by Highland CSB. The other child welfare agencies are private businesses. |
| Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:<br>a) is independently owned and operated and;<br>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.                                                                                                                                                                                                          | This information is reported in table 4 of the ORM Economic Impact form.                                                                                                                                                                                                                                                                                                           |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:<br>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;<br>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;<br>c) fees;<br>d) purchases of equipment or services; and<br>e) time required to comply with the requirements. | There are no projected costs for the affected individuals, businesses, or other entities as a result of this regulatory change. Background checks for child welfare agencies are a current requirement.                                                                                                                                                                            |
| Benefits the regulatory change is designed to produce.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Clarification of existing requirements and reduction of regulatory burden.                                                                                                                                                                                                                                                                                                         |

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

Analysis provided in table 1c of the ORM Economic Review form.

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting*

requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Analysis provided in table 4 of the ORM Economic Review form.

## Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Samantha Fogt, 5600 Cox Rd, Glen Allen, Virginia 23060, (fax) 804-726-7132, and email [Samantha.fogt@dss.virginia.gov](mailto:Samantha.fogt@dss.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

No public hearing will be held.

## Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

**Table 1: Changes to Existing VAC Chapter(s)**

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC                   | Change, intent, rationale, and likely impact of new requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------|-------------------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22VAC40-191-10                 |                                           | Defining words and phrases                    | <p>The definitions of “commissioner”, “department”, “disqualifying background”, “offense”, “search of central registry”, “sworn statement or affirmation”, and “volunteer” were amended.</p> <p>The definition of “may”, “must”, “must not”, and “22VAC” were removed as it is unnecessary to define these terms in the regulation.</p> <p>The intent, rational, and impact are to provide clarification, so readers understand the terms used in the regulation.</p>                                                                                                                                                                                                  |
| 22VAC40-191-20                 |                                           | Describing background checks                  | <p>Subsection B was amended to add § 63.2-901.1 in the list of Code of Virginia sections that include provisions for background checks.</p> <p>Subsections C and F were amended for technical changes.</p> <p>Subsection D was amended to add a statement pertaining to sworn statements or affirmations from section 50 for ease of understanding. Subsection D was amended to remove unnecessary statements regarding the model sworn statement or affirmation.</p> <p>Subsection I was amended to clarify the process for a search of the central registry.</p> <p>The intent, rationale, and impact are to clarify requirements and make technical amendments.</p> |
| 22VAC40-191-40                 |                                           | Identifying who is covered by this regulation | <p>Subsections A and B were amended to clarify existing requirements.</p> <p>Subsection D was amended to make technical amendments, clarify requirements, remove repetitive requirements and to reduce regulatory burden for contract agencies.</p> <p>Subsection D was amended to clarify the background check requirements are applicable to employees and volunteers of licensed facilities and to remove the</p>                                                                                                                                                                                                                                                   |



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|                |  |                                                  | <p>reference to approved facilities as child-placing agencies and independent foster homes are licensed by the department.</p> <p>The intent, rationale, and impact are to reduce regulatory burden, and improve clarity.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 22VAC40-191-50 |  | Requirements for satisfactory background checks  | <p>Subsection A was amended to remove duplicative and unnecessary language, to move a statement pertaining to sworn statements or affirmations to section 20 for ease of understanding, to remove specific barrier crime exceptions and add the specific sections of the Code of Virginia where the reader may locate the exceptions. Subsection A was amended to remove inapplicable references to the Code of Virginia and to add instructions for facilities that receive an 'unable to determine' letter from the Office of Background Investigations for clarification.</p> <p>Subsection B was amended to reduce regulatory burden by eliminating specific documentation requirements when an employee separates from the facility with an original criminal history report that is less than 91 days old. Subsection B was also amended for a technical change.</p> <p>The intent, rationale, and impact are to remove repetitive requirements, reduce regulatory burden, and improve clarity.</p> |
| 22VAC40-191-60 |  | Consequences of disqualifying background results | <p>Subsection A was amended for a technical change.</p> <p>Subsection D was amended to reduce the requirements when a facility has not received the requested criminal history record report or central registry finding for an employee or volunteer within 30 days.</p> <p>Subsection F was amended to simplify the existing requirement and clarify the requirement is applicable to licensed facilities by removing the reference to approved facilities as child-placing agencies and independent foster homes are licensed by the department.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                   |



|                 |  |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------|--|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 |  |                                  | <p>Subsections H and I were removed as duplicative of requirements in sections 50 and 60.</p> <p>The intent, rationale, and impact are to improve clarity and remove repetitive requirements.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 22VAC40-191-70  |  | Keeping background check records | <p>Subsection A was amended to reduce regulatory burden. Requirements for where facilities maintain background check records were reduced, allowing the facility to determine where background checks are stored while maintaining the requirement that reports and findings are made available to the department upon request.</p> <p>Subsection B was amended for a technical change.</p> <p>Subsection C was amended to incorporate the requirement from subsection D.</p> <p>Subsection D was removed as the requirement was incorporated into subsection C.</p> <p>The intent, rationale, and impact are to reduce regulatory burden and make technical amendments.</p> |
| 22VAC40-191-100 |  | Waiver application requirements  | <p>Subsection A was amended to reduce regulatory burden and simplify the language on requesting and submitting a waiver application.</p> <p>Subsection B was amended to improve clarity.</p> <p>The intent, rationale, and impact are to reduce regulatory burden, remove unnecessary language, and improve clarity.</p>                                                                                                                                                                                                                                                                                                                                                     |
| 22VAC40-191-110 |  | Contents of a waiver application | <p>Subsection A was removed as an unnecessary statement.</p> <p>Subsection B was amended to reduce regulatory burden as the requirements listed in this subsection are included in the waiver application and do not need to be repeated in the regulation. The requirement for a notarized signature on the waiver application was removed as it is unnecessary for the signature to be notarized.</p>                                                                                                                                                                                                                                                                      |

|                 |  |                                              |                                                                                                                                                                                                                                                                                                                                                 |
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|                 |  |                                              | The intent, rationale, and impact are to reduce regulatory burden, remove unnecessary language, and remove unnecessary information.                                                                                                                                                                                                             |
| 22VAC40-191-120 |  | Describing the waiver evaluation criteria    | <p>Subsections C and D were removed as unnecessary statements.</p> <p>Subsection E was removed as duplicative to requirements found in section 90.</p> <p>Subsection G was amended for a technical change.</p> <p>The intent, rationale, and impact are to remove unnecessary and duplicative requirements as well as technical amendments.</p> |
| 22VAC40-191-130 |  | Waiver decision notification process         | <p>Subsection A was amended for a technical change.</p> <p>Subsection B was amended to reduce regulatory burden as these requirements are included on the approved waiver document.</p> <p>The intent, rationale, and impact are to reduce regulatory burden and make technical amendments.</p>                                                 |
| 22VAC40-191-140 |  | Modifying, revoking, and terminating waivers | <p>Subsections A and B were amended to make technical changes.</p> <p>The intent, rationale, and impact are to make technical amendments.</p>                                                                                                                                                                                                   |
| 22VAC40-191-150 |  | Waiver public notification requirements      | <p>Subsection A was removed to reduce regulatory burden, as there is no agency policy regarding waiver notification other than this regulation.</p> <p>The intent, rationale, and impact are to reduce regulatory burden.</p>                                                                                                                   |