



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-191-10 et seq.
Regulation Title:	Background Checks for Child Welfare Agencies
Action Title:	Repeal regulation and promulgate new regulation
Date:	August 14, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to replace the “Regulation for Criminal Records Checks for Child Welfare Agencies” and promulgate a new regulation, “Background Checks for Child Welfare Agencies.” The new regulation establishes background checks for child welfare agencies and is needed to reflect changes to the Code of Virginia (Code) from 1995 to the present. It replaces 22 VAC 40-190-10 et seq. The new regulation will include: (1) language to support the waiver of criminal convictions;(2) sections to help the lay reader better understand the background checks process; (3) clarifications and content changes that reflect current practices and are responsive to questions from the public and local agencies; and (4) stylistic changes to eliminate redundancy and makes the regulation more understandable. The goals of the new regulation are to comply with the Code, make it easier for the public to understand the content, and provide clarification in order to improve compliance.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The State Board of Social Services has the statutory authority to promulgate this regulation based on the following Code sections, effective October 2002: 63.2-1704, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1723, 63.2-1724, 63.2-1727. These Code sections establish background checks and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Section 63.2-1704 applies to voluntary registration of family day homes. Section 63.2-1720 applies to employment for compensation and use of volunteers. Section 63.2-1721 applies to background checks upon application for licensure or registration and to background checks of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems. Section 63.2-1722 applies to revocations and denying renewal. Section 63.2-1723 applies to the waiver of certain criminal convictions. Section 63.2-1724 applies to record checks by unlicensed child day centers. Section 63.2-1727 applies to the prohibition of sex offenders or child abusers from operating or residing in family day homes.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The proposed regulatory action is essential to protect the health and safety of children because it establishes the manner in which persons who have certain criminal convictions or a founded complaint of abuse or neglect are prevented from operating, volunteering, working, or living in a child welfare agency. The majority of the changes reflect changes to the Code. Other changes include clarifications, content changes that reflect current practices and are responsive to questions from the public and local agencies, and organizational changes to eliminate redundancy.

Examples of changes mandated by the General Assembly from 1995 to the present that will remain in effect in October 2002 are:

1. An expansion of the list of crimes that are barriers to operating, working or volunteering at a child welfare agency;
2. Inclusion of prior adult convictions and certain juvenile convictions and adjudications of delinquency as barrier crimes;

3. Deleting § 18.2-60 of the Code as a barrier crime and adding § 18.2–59 of the Code as a barrier crime;
4. Making consistent for all child welfare agencies the disqualification for other felonies that are not barrier crimes, unless five years have elapsed since conviction;
5. Clarifying that manslaughter is a barrier crime;
6. Mandating the search of the central registry for child-placing agencies and staff of religious exempt child day centers;
7. Adding a founded complaint of child abuse or neglect as a prohibition to: a) operating or residing in a family day home; b) licensure; c) registration; d) approval; e) employment; f) volunteering; or g) being an applicant or agent;
8. Requiring that a person denied approval or employment due to a founded complaint of child abuse or neglect be given a copy of the report;
9. Allowing for a copy of a central registry finding to be obtained;
10. Providing that religious exempt child day centers be included in the regulation;
11. Establishing a waiver of disqualification due to certain criminal convictions, as identified in § 63.2-1723 of the Code;
12. Introducing the phrase “background checks” to mean sworn statement or affirmation, criminal history record check, and search of the central registry;
13. Introducing and defining the term “offense”;
14. Expanding prohibitions to be included in sworn statement or affirmation and requiring disclosure of any conviction or being the subject of any pending criminal charges within or outside the Commonwealth;
15. Clarifying that family day homes approved by family day systems and foster and adoptive homes approved by child-placing agencies are subject to the provisions of § 63.2 of the Code, Subtitle IV, Chapter 17, Article 3 – Background Checks;
16. Limiting which volunteers are required to obtain background checks to those who will be alone with any child in the performance of their duties;
17. Limiting which employees are required to obtain background checks to those employees who are involved in the day-to-day operation of such agency or who are alone with, in control of, or supervising one or more children;
18. Clarifying that background check requirements of those children’s residential facilities previously referred to as child-caring institutions are found in another section of the Code;
19. Deleting the requirement that board members, upon application for licensure or registration, must obtain background checks unless the board member functions in another capacity, such as a volunteer who will be alone with any child in the performance of duties;
20. Clarifying that only the applicants of child welfare agencies and those persons who are agents at the time of application must have the background checks completed prior to being involved in the day-to-day operations of the child welfare agency or being alone with, in control of, or supervising one or more of the children;
21. Adding the provision that further dissemination of the background check information is prohibited other than to the Commissioner’s representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;
22. Changing the time period for obtaining criminal history record checks and central registry findings from 21 days to within 30 days;

23. Clarifying that no violation shall occur if the child welfare agency has applied for the background check timely and it has not been obtained due to administrative delay; and
24. Specifying that the Commissioner is charged with enforcing the revocation or denial of renewal and administrative delay sections of Title 63.2 1722 of the Code.

Other changes include additions that further explain the background checks process. Among these are:

1. Adding sections describing who isn't covered by the regulation; explaining satisfactory background checks results; explaining the consequences of unsatisfactory background checks findings; describing the waiver of criminal conviction; identifying who may apply for a waiver; explaining how to apply for a waiver; describing the waiver evaluation criteria; modifying, revoking, and terminating waivers; and explaining the waiver public notification requirements;
2. Adding to the definition of "involved in the day-to-day operation" having access to a child and related client records;
3. Listing who is covered by the regulation;
4. Indicating that the Child Day Care Council will promulgate a separate regulation for licensed child day care centers;
5. Requiring all adults residing in family day homes, licensed independent foster homes, foster homes approved by child-placing agencies, and homes of applicants to be adoptive parents approved by child-placing agencies until the adoption is final to furnish background checks;
6. Requiring all persons 14 to 18 years of age if residing in family day homes, licensed independent foster homes, foster homes approved by child-placing agencies, and homes of applicants to be adoptive parents approved by child-placing agencies until the adoption is final to furnish central registry findings; and
7. Including contract employees and which contract employees must obtain background checks.

There are also content changes that reflect current practices or are responsive to questions from the public and local agencies. These include, but are not limited to:

1. Allowing satisfactory background checks for contract employees to be accepted if dated less than 12 months prior to the contract agencies beginning to provide services at facilities;
2. Allowing a copy of the central registry finding;
3. Providing that a background check remains valid at a facility if no more than 12 months have passed from when the person began a leave of absence or was terminated from employment from the facility or was transferred to a center owned and operated by the same employer or entity;
4. Allowing a person who leaves a facility to take the criminal history record report or central registry finding, if the report or finding is less than 91 days old, and if the facility keeps a copy of any report that is taken and writes on the report that it is a copy;
5. Allowing copies of background check results to be maintained at a non-primary place of work;
6. Requiring background checks every three years for a volunteer, employee and person living in a regulated home. Exception: A volunteer, employee, or person living in a voluntarily registered family day home must obtain background checks every two years;

7. Explaining who keeps background checks records;
8. Explaining that all voluntarily registered family day homes keep background checks information for two years after a required person terminates duties with a facility or no longer resides in the home and that all other facilities keep the same information for one year;
9. Allowing the Department of Social Services (Department), or registering or approving authority, to revoke or deny based on background checks results or failure to obtain background checks;
10. Explaining that an employee or volunteer may continue to work or provide services if the criminal history record request or 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;
11. Providing that a licensing, registering, or approving authority, or the Department may require a new background check relevant to a suspicion of a barrier crime conviction, a felony conviction, or a founded complaint of child abuse and neglect;
12. Allowing the Department, or registering or approving authority, to either continue to provide service or requiring that the person not be alone with children while new background check information is being obtained;
13. Reorganizing requirements so that the same statements are not duplicated for each category of person covered by this regulation;
14. Adding definitions for: agent; approved; background checks; board; central registry; child day program; child-placing agency; child welfare agency; Code; Commissioner; criminal history record check; criminal history record report; Department; Department representative; disqualifying background; family day home; family day system; good character and reputation; independent foster home; involved in the day-to-day operations; licensed; may; may not; must; offense; other felony; registered; religious exempt center; search of central registry; §; sworn statement or affirmation; and, 22 VAC;
15. Deleting definitions for criminal history record request, sworn disclosure statement, and officer of the board;
16. Modifying definitions of applicant for licensure, employee, facility, and volunteer;
17. Allowing satisfactory background checks for contract employees and substitute staff from temporary agencies to be viewed, accepted, and copies maintained;
18. Permitting the Department to release information about disqualifying backgrounds to facilities that have a legitimate interest, per § 19.2-389 of the Code; and
19. Informing the person that a search of the central registry is being requested.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

Amending 22 VAC 40-190-10 et seq., Regulation for Criminal Record Checks for Child Welfare Agencies, is a potential alternative. However, the revisions required to amend this regulation to comply with the Code are so extensive it is more efficient to repeal the existing regulation and promulgate a new regulation.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is minimal impact on the authority and rights of parents in the education, nurturing, and supervision of their children. If children are cared for by a child welfare agency that is licensed, approved, registered or is a religious exempt center, the children will be supervised by staff who are required to have background checks, unless he or she was working prior to 1998, has not changed positions since that time, his her record has not been randomly pulled during a regulatory visit, and there is no suspicion the person has a disqualifying background. The amended regulation encourages self-sufficiency and responsibility by allowing parents to feel secure about their children's safety while they pursue employment and other opportunities. Additionally, the new regulation strengthens the marital commitment by eliminating potential tension due to concerns about children's safety while in the care of persons who are not their parents. The impact to the disposable family income will be non-existent or minimal. The facility or person pays for the cost of the background checks which is \$5.00.