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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-771 [new chapter] 8VAC20-770 [repeal]
VAC Chapter title(s)	<i>Background Checks for Child Day Programs and Family Day Systems</i> [new chapter]; <i>Background Checks for Child Day Programs and Family Day Systems</i> [Repeal]
Action title	Action to Adopt New Standards for the <i>Background Checks for Child Day Programs and Family Day Systems</i>
Date this document prepared	November 17, 2021 (revised November 29, 2021)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This regulatory action will repeal 8VAC20-770, "Background Checks for Child Day Programs and Family Day Systems," and establish a comprehensive new chapter, 8VAC20-771.

Background Checks for Child Day Programs and Family Day Systems (8VAC20-770) sets forth standards to protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment. The intent of this action is to repeal and replace the current chapter in order to (1) to ensure that the regulations align with federal and state laws and (2) to clarify and update the regulatory requirements. By repealing the current chapter and promulgating a new chapter in its place, the Board anticipates greater flexibility in aligning the regulatory structure to federal and state law, which

has changed since the current chapter was drafted. The Board also anticipates changes to format and language.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

None

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 Executive Order 14 (as amended, July 16, 2018), "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."

The Board has determined that significant changes to the chapter are necessary in order (1) to ensure that the regulations align with federal and state laws and (2) to clarify and update the regulatory requirements.

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.

The Board's overall regulatory authority is found in § [22.1-16](#) of the *Code of Virginia*, which states that "[t]he Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title."

The Board's regulatory authority over child day programs and family day systems is found in § [22.1-289.046](#) of the *Code of Virginia*, which states in part that "[t]he Board shall adopt regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed under this chapter, which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of the children under the control of such persons or agencies."

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Board must repeal the *Background Checks for Child Day Programs and Family Day Systems* and promulgate a new chapter in its place in (1) to ensure that the regulations align with federal and state laws and (2) to clarify and update the regulatory requirements.

The chapter is essential to protecting the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment. The regulatory action is essential to the continued health, safety and welfare of children because it will provide critical clarification on background check requirements and will ensure compliance with current federal and state laws.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Since the proposed regulatory action involves a comprehensive review of the chapter, revisions to all areas of the chapter will be considered. The regulatory action will potentially include the following:

- Technical corrections and language necessary to ensure consistency with the Code of Virginia and alignment with federal legislation
- Program specific information to clarify background check requirements and bring the regulation into compliance with the Code.
- Updated requirements for child day program to submit fingerprint- based background checks
- Updated requirements for child day programs to request a search of another state’s child abuse and neglect registries for individuals who have lived in another state in the past five years
- Updated timing of background checks, including repeat checks
- Updated requirements for contract employees
- Updated requirements for a waiver of criminal conviction
- Adding unlicensed subsidy vendors as a program type covered by the regulation
- Adding provisions for background check portability pursuant to [§ 22.1-289.035](#) J of the Code of Virginia, effective January 1, 2022.

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.

There are no alternatives to regulatory action. The Board considered amending the *Background Checks for Child Day Programs and Family Day Systems* in its current structure and format. The amendments to the Chapter are necessary to conform the regulation to state requirements and align with federal mandates for background checks for individuals required to complete a background check pursuant to § 22.1-289.035 of the Code of Virginia.

Due to the number of updates and revisions required to implement state and federal provisions, the Board has determined that promulgation of a new chapter would be advisable.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 email to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, 101 N. 14th St., Richmond, VA 23219, 804-382-5047, tatanishia.armstrong@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

The Early Childhood Advisory Committee will advise the Board as regulations are developed.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.