



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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### **22 VAC 40-191 – Minimum Standards for Background Clearances for Child Welfare Agencies; Department of Social Services**

April 13, 2000

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

The Code of Virginia mandates background checks for criminal convictions and founded complaints of child abuse and neglect for persons working in child welfare agencies. The Code prohibits operating, volunteering, or working at a child welfare agency for persons who have certain convictions or a founded complaint of child abuse or neglect.

The Department of Social Services (DSS) proposes to repeal its *Regulation for Criminal Record Checks for Child Welfare Agencies* (22 VAC 40-190) and replace it with the proposed regulation, *Minimum Standards for Background Clearances for Child Welfare Agencies* (22 VAC 40-191). The new regulation incorporates statutory requirements mandated by the 1998 General Assembly.

### **Estimated Economic Impact**

This regulation prohibits the licensing, approval, registration, and exemption of facilities when designated persons associated with the facility have certain criminal convictions or have

ever been the subject of a founded complaint of child abuse or neglect. This is intended to protect children who are in the care of child welfare agencies based on the presumption that persons with convictions involving crimes against minors, violence and sex offenses, or with a founded complaint of child abuse or neglect, are more likely to endanger or harm children.

### **Housekeeping Changes**

The title of the revised regulation has been changed to more clearly identify the content of this regulation. Several definitions and provisions have been updated or clarified. The regulation has also been reorganized to eliminate duplication and to flow more smoothly. Although these changes may make the regulation easier to understand and more useful for the regulated community, they will not have any significant economic consequences.

### **Background Clearance Requirements**

Prior to 1998, child welfare agencies were required to obtain criminal background checks and sworn disclosure statements for all personnel. The 1998 General Assembly mandated that child abuse and neglect central registry reports be conducted as well. This requirement only affected religious exempt child day centers and the staff of child-placing agencies, as the facility regulations for all other child welfare facilities already required central registry checks.

The definition of barrier crimes, which are crimes that automatically bar an individual from employment or volunteer services at a child welfare facility,<sup>1</sup> was expanded by the 1998 General Assembly and clarified to include prior adult convictions, juvenile convictions, and adjudications of delinquency as well. The sworn disclosure statement was expanded to cover these additional offenses. All of these statutory changes became requirements effective July 1, 1998. Aside from making the regulation consistent with Code, there will be no economic impact since there will be no change in current practice.

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<sup>1</sup> In addition, barrier crimes prohibit licensure or registration of a child welfare agency if the applicant for licensure or registration has been convicted of any specified offenses, and in the case of a family day home, if any other adult living in the home has been convicted of same. Barrier crimes also prohibit a child day center from operating under religious exemption from licensure if any other person officially involved in the operations of the center has been convicted of same.

## **Individuals Required to Obtain Background Clearances**

### ***Facility Personnel***

The existing regulation requires background clearances on all personnel hired at a facility regardless of role, service, age, function, or duration of employment at the facility. Employees also include those individuals hired through a contract to provide services for the facility.

The revised regulation clarifies which employees, contract employees, and officers and board members must obtain background clearances. This has been done through qualifications of the definitions of employee, contract employee, officer, board member, and people “involved in the day-to-day operations of the center.” Under the revised regulation, the only employees, contract employees, officers, and board members who will be required to obtain background clearances are those who will be:

- (a) Alone with, in control of, or supervising one or more children or
- (b) Involved in the day to day operations of a center, defined as “in a supervisory or management position, making daily decisions regarding the operation of the center, or counted by the center for purposes of staff-to-children ratios.”

Contract employees who have agreements with the parent, rather than the child welfare facility, but who deliver the service to the child at the facility must obtain background clearances as well. Volunteers who are alone with children in the performance of their duties, with the exception of parent-volunteers, are required to have background clearances. The proposed regulations also specify that officers and board members receive background clearances prior to assuming their post rather than within 21 days, as is currently allowed. Examples of employees who would potentially no longer be required to obtain a background clearance would be a janitor or cook who works at a center, contract staff such as electrician or gardener, a person employed for a specialty service such as providing music lessons, or a secretary at a center.

These revisions reduce the number of individuals required to obtain background clearances and eliminate the \$20 expense of obtaining background clearance reports (\$15 for a criminal record check, \$5 for a child abuse and neglect central registry report) for staff who will not be alone with, in control of, or supervising one or more children or involved in the day-to-day operations of the facility. On the other hand, there may be some additional risk as not every person who is hired by, or works in, a child welfare facility will have had a background check.

There is no empirical evidence available, however, to assess the degree, if any, of that additional risk.

### ***Facility Residents***

The proposed regulations require complete background clearances on all adults (persons age 18 years or older) residing in a family day home; an independent foster home; or an adoptive or foster home approved by a licensed child-placing agency. Persons age 14 or over who reside in a licensed family day home, a voluntarily registered family day home, or a family day home approved by a family day system are required to have a central registry report. No sworn disclosure statement or criminal record report is required until the person turns age 18.

The facility regulations governing these providers already include several of the proposed background clearance requirements. The only providers who will incur new costs will be:

- (a) Foster and adoptive homes approved by a licensed child-placing agency and licensed independent foster homes who will have to obtain criminal record and central registry reports for adult residents at (1) initial licensure, (2) when a person age 18 or over begins residing in the home, or (3) a person residing in the home turns age 18; and
- (b) Family day homes approved by licensed systems who will have to obtain central registry checks for residents at (1) initial licensure, (2) when a person age 14 or over begins residing in the home, or (3) a person residing in the home turns age 14.
- (c) Voluntarily registered family day homes who will have to obtain central registry checks for residents, age 14 to 18, at (1) initial licensure, (2) when a person age 14 or over begins residing in the home, or (3) a person residing in the home turns age 14.

The cost of the criminal record report is \$15 per person; the cost of a child abuse and neglect central registry report is \$5 per person. As of March 2000, DSS reported there were approximately 3,100 foster and adoptive homes approved by licensed child-placing agencies, four licensed independent foster homes, 1,047 voluntarily registered family day homes, and 240 family day homes approved by licensed systems. There is no estimate of how many residents in each facility these requirements will affect or how much, if any, additional safety these background checks will provide for children residing in these homes.

### **Background Clearance Documentation**

The proposed regulations provide increased flexibility regarding the use of verified copies instead of original clearance reports. Specifically, for contract employees and substitute staff from temporary agencies, the regulations allow the background clearances to be viewed, verified, and copies maintained. Verified copies of reports will also be allowed at non-primary places of work for individuals who work at multiple facilities. These changes will slightly reduce costs for individuals who no longer have to obtain duplicate original background clearance reports while maintaining the same level of assurance that those individuals have no disqualifying backgrounds.

The current regulations allow acceptance of background clearances that are not dated more than 90 days prior to the date of employment. The proposed regulations clarify that this 90-day provision includes officers, board members, and licensees. For contract employees and substitute staff from temporary agencies, the new regulations allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility. The regulations extend the period for a leave of absence from 6 months to 12 months before new background clearances are needed. This change will specifically benefit programs that employ students for the summer. Individuals leaving a facility will now be allowed to take their original criminal record report if it is not more than 90 days old.

These changes reduce costs for child welfare facilities and employees by not requiring new or duplicate checks when valid clearances are available. The disadvantage of more flexible guidelines is that it will not be known if a disqualifying action occurred since the report was issued. The likelihood of such actions occurring during that time period is unknown and, while any additional risk for children is probably quite small, there is no data available on this matter.

### **Miscellaneous Changes**

The proposed regulation includes requirements that people subject to background checks be informed that one is being done, and people denied licensure, employment, or volunteer service due to a disqualifying background are to be given a copy of the report.

A waiver request process is also established for people disqualified due to a child abuse or neglect founded complaint or felony conviction within the last five years with the restriction that certain convictions cannot be waived. Each case will be evaluated by a designee of the Commissioner of the Virginia Department of Social Services who may grant the waiver if he determines that the person is of good moral character and reputation and the waiver would not adversely affect the safety and well being of children in the person's care. The proposed regulations also state that the facility shall provide a copy of the waiver to every parent and guardian of the children in its care. To the extent that this provision allows flexibility for individuals with extenuating circumstances without compromising the safety and well being of children in the facility, it has the potential to result in a positive net economic benefit.

### **Businesses and Entities Affected**

There are approximately 7,147 facilities affected by this proposed regulation.

### **Localities Particularly Affected**

No localities are particularly affected by the proposed regulation.

### **Projected Impact on Employment**

The proposed regulation is not anticipated to have a significant effect on employment.

### **Effects on the Use and Value of Private Property**

The proposed regulation is not anticipated to have a significant effect on the use and value of private property.