



Periodic Review / Retain Regulation Agency Background Document

Agency name	Child Day-Care Council
Virginia Administrative Code (VAC) citation	22 VAC 15-51
Regulation title	Background Checks for Licensed Child Day Centers
Document preparation date	November 13, 2008

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 36 (2006) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Section 63.2-1734 of the Code of Virginia (Code) gives the Child Day-Care Council authority to adopt and enforce regulations for the activities, services and facilities of child day centers. Chapter 17 of Title 63.2 contains statutes for the licensure of child day centers including requirements for background checks in §§ 63.2-1702, 63.2-1719, 63.2-1720, 63.2-1721, and 63.2-1722.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

An alternative for achieving the purpose of the regulation would be to use the Code for enforcement of the requirements for background checks for licensed child day centers. However, the language of the statute would be difficult for child day center licensees and licensing inspectors to interpret. This regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
<p>Christy M. Polster, Owner CartWheels Academy</p>	<p>I don't believe that a background check is an interference. When you work with children or in a job that requires a certain level of security, background checks are a must. Those seeking employment in this field should know that they need to be of a certain character and have a clean background in order to work with children. I believe that the background checks we currently do should be more thorough. I will get into that below.</p> <p>Background checks are extremely essential!</p> <p>I would agree that the current background checks that are required are not easy for the employer. I have bulleted</p>	

	<p>the reasons that they are a burden for our facility.</p> <ul style="list-style-type: none"> • We currently have to complete two different background checks (one with the VSP and one with DSS. It would be nice if one background check would cover everything. • One check has to be notarized, which is extremely hard to get employees to get this done. • You can't pay for both background checks at the same time because they go to two different agencies. • You have to fill out the payment information on EACH employee's form verses paying for multiple employees at the same time (VSP). • You can't use a check/credit card with DSS. • You have to mail in the DSS background check, verses uses an online system. An online background check (form and payment) would be MUCH easier. <p>I don't believe the background checks we</p>	<p>The Code requires the Virginia State Police (VSP) to maintain the Central Criminal Records Exchange database and requires the Department of Social Services (DSS) to maintain the Central Registry database. A Code change would be necessary to combine the checks.</p> <p>Access to Central Registry information is restricted by § 2.2-3806, which requires the individual to give permission for release of the information, and CPS regulation 22 VAC 40-705-170, which requires the request for information to be notarized.</p> <p>Because the individual must give permission for search of the Central Registry, the form must be notarized, which cannot be done on line.</p> <p>22 VAC 15-51-60 G allows centers to request a national</p>
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	<p>are currently using are very thorough or convenient. Do any of these background checks include out of state convictions? In this day an age, people are constantly moving and our background checks should include all states.</p> <p>When it comes to our current standards book, I think this book needs to be completely re-written and re-organized. I find the standards book to be difficult to search for standards, difficult to read/understand, difficult to get a clear understanding of the standard and what exactly is required, etc. This book should be much easier to find and read. I don't think that any of the standards are very clear and easy to understand. I have a BS in Education and a Master's Degree and I struggle to figure out exactly what DSS is asking us to do.</p> <p>My suggestion for going forward: I suggest DSS go with a National Background Company that can perform a VERY thorough check which would also allow it to be VERY convenient for the employer. USA</p>	<p>background check instead of the criminal history record check for employees and volunteers. A law to require national background checks for child welfare agencies that was to become effective July 1, 2007 was not implemented due to state funds not being provided.</p> <p>The FBI will not release background information from its database to anyone except a designated state agency (in Virginia that is VSP). For facilities licensed or registered by DSS, the Code requires a search of Virginia's Central Criminal Record Exchange (CCRE). This regulation allows a search of the FBI fingerprint database (that includes information from Virginia's CCRE).</p>
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	<p>Gymnastics recently starting requiring all professional members to use the National Center for Safety Initiatives as the company that performs our background checks. Their website is http://www.ncsisafe.com/. After experiencing this procedure with USA Gymnastics, I found that this was a very EASY process and was about the same cost. I believe it is \$5.00 more. It was VERY extensive and thorough. It can all be done online and the results are submitted to the USA Gymnastics Organization automatically. This may not be the right company for DSS to use, but a one stop shop online for the background check would be much easier and reduce the number of requirements for each employee and employer.</p>	
<p>Renate, Creative Childcare</p>	<p>While I feel that it is necessary to do the background checks, I disapprove with the portion of the regulation that makes directors have to ban staff from working. We are required to staff according to the number of children enrolled and this puts a burden on management. In many cases the forms from the</p>	<p>Section 63.2-1720 F requires a center to obtain information on employees from the Central Registry within 30 days of the person's employment. 22 VAC 15-51-60 D allows the individual to continue to work if the information was requested within the individual's first seven days of employment, but is not returned by the Central Registry within 30 days. The regulation requires the provider to contact the Central Registry after the 30 days have elapsed.</p>

	<p>Central Registry are returned for one reason or another and this causes delays in getting the papers back within the 30 days as they are allowed 10 days for processing. We are able to do criminal background checks and sex offenders checks on line and would hope to be able to get the Central Registry information in a more timely manner.</p>	
<p>Jeannine Metzger, Director of Early Education Fredericksburg Christian Schools</p>	<p>In reference to the discussion on the state regulation for background checks: I would be appalled if this regulation was removed. As early educators/child caregivers, we should want to do whatever it takes to provide the utmost safe environment for the children we serve. Having the required background checks gives us the necessary avenues for screening potential employees. If there is a way to streamline this process and still give us the in depth of information we need, then that would be great.</p>	<p>DSS agrees.</p>
<p>Lis Jack and Jill</p>	<p>Background checks are important for the safety of our children. Perhaps only running the one with VSP that does the criminal and child abuse background check would</p>	<p>The information from VSP (Central Criminal Record Exchange) does not contain information on founded complaints of child abuse or neglect.</p>

<p>Helena Coffelt Director of WAVE Children's Learning Center</p>	<p>be sufficient.</p> <p>The standards that are required are extremely burdensome and useless. The state would be wise to consider a nation wide background check. We have people on staff at our facility that are not native to the state of Virginia, including myself. As an organization we take it upon ourselves to conduct a nation wide background check in addition to the required state-only background check.</p> <p>My issues with the state search:</p> <ol style="list-style-type: none"> 1. They are useless for people not from this area. 2. They take a very long period of time to be returned, leaving you (directors/administrators) with constantly following up and documenting follow up. 3. They are returned without processing for ridiculous reasons: not placing N/A on every child line, slight overpayment, etc. 4. Some forms have taken a year to be processed. 5. Trying to get in contact with people for follow up with the Central Registry is difficult. (email and phone contact information is not easy to find). 	<p>22 VAC 15-51-60 G allows centers to request a national background check instead of the criminal history record check for employees and volunteers. A law to require national background checks for child welfare agencies that was to become effective July 1, 2007 was not implemented due to state funds not being provided.</p> <p>22 VAC 15-51-60 D allows the individual to continue to work if the information was requested within the individual's first seven days of employment, but is not returned by the Central Registry and/or the Central Criminal Record Exchange within 30 days. The regulation requires the provider to contact the Central Registry and/or the Central Criminal Record Exchange after the 30 days have elapsed.</p>
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	<p>Having to repeat the process every few years is extreme, costly, distracting, confusing, etc.</p>	
<p>Amy Ramsey, Childcare and Activities Manager Boar's Head Sports Club</p>	<p>My understanding of the Child Protective Services (CPS) check is that it looks at not only convictions but allegations. When it comes to the health, safety, and welfare of children and adults, I do not know any reasonable person who would take a chance with such information. However, we are talking about redoing this process every three years which would create, for our facility, a human resource issue. As the manager of a licensed facility, I work very diligently to assure that all standards are not only maintained, but exceeded. When my manual refers to regulations which cannot be located and information is placed in illogical areas of the manual, it creates frustration and confusion. I also am unclear how facilities can be held responsible and cited for regulations that they cannot readily reference. We can all appreciate that the manual contains a lot of information that does not apply to all facilities. With continued changes</p>	<p>Only founded child and abuse neglect complaints are barriers to operators, employees, volunteers and agents in licensed child day centers.</p> <p>Copies of the regulations affecting child day centers and applicable sections of the Code are available from each Licensing Office or from DSS' website: http://www.dss.virginia.gov/facility/child_care/licensed/child_day_centers/regulations.cgi</p>

	<p>and upgrades to ensure quality care for all children and adults, to assume that all managers know every regulation off the top of their head would be unreasonable. Maintaining and exceeding all of the regulations is a very daunting task for the seasoned veterans. I truly feel sorry for those new to the industry with limited experience when attempting to meet the regulations as currently written.</p>	
<p>Anne Foster, Executive Director Annandale Cooperative Preschool</p>	<p>Criminal Background checks are extremely important for our preschool. This is a valuable tool we use to be sure the co-oping parents working with the children have not committed any crimes that may be harmful to our students, families, and staff. Our co-oping parents are counted in the child-to-staff ratio. They work with the degreed teacher in the classroom and throughout the school. We want to be sure these staff members are qualified in every way to be with the children. The criminal background check is one part of this security procedure. Our teaching staff is also required to have the background checks and</p>	<p>DSS agrees.</p>

	<p>we would not want this policy to change as well. The safety of the children, families, and staff is a priority to our school.</p> <p>Having the background checks redone every three years is also useful to be sure no one has committed a crime without our knowledge. I do not feel this regulation interferes with private life if it will keep the children safe. No one should have anything to hide.</p> <p>I feel the regulation is written clearly enough.</p>	
<p>J. Lesko, Membership Chairperson Annandale Cooperative Preschool</p>	<p>If they could make the form [Central Registry Check] so that you could fill out the form instead of it being a read only form - that would be very helpful in many ways. It would make it legible and not as many would be returned. It would prompt you to fill out every box - since they are returned if some areas are left blank. It would also allow us to fill in the top portion of the form - then each one would not need to be filled in by membership. Can you tell that I do not like that the form is READ ONLY!</p> <p>My other question is why does that have to be</p>	<p>The form can be completed on-line by clicking on the "Highlight Fields" icon in the upper right hand corner of the form.</p> <p>Access to Central Registry information is restricted by § 2.2-3806, which requires the individual to give permission for release of the information, and CPS regulation 22 VAC</p>

	<p>notarized and the criminal history one does not? Sometimes I think the notary holds things up - but I am sure they have their reasons.</p>	<p>40-705-170, which requires the request for information to be notarized.</p>
<p>L. Glenn Deacon, Director, Yellow Brick Road Early Learning Center</p>	<p>There is an essential need for background checks of those seeking to operate child day centers or those seeking employment at child day centers. Background checks provide an additional means of protection and safety for the children in our care. The safety of the children certainly takes priority over the inconvenience or interference that background checks might pose to operators or employees. I do wonder about the necessity of having them performed every three years for long term employees. In my view, most employers will be aware of any employee who is convicted of an offense subsequent to her/his date of hire that would subject her/him to dismissal. I believe that this is probably especially true in small towns such as Lexington. Therefore, I would encourage DSS to consider eliminating or requiring less often background checks subsequent to an original</p>	<p>The Division of Licensing Programs will discuss this suggestion with a regulatory advisory panel at the time of the next proposed comprehensive revision of the regulation.</p>

	<p>background check. I believe that doing so would make the regulation less burdensome to individuals, child day care centers and the state. Of course, anyone rehired should still be subject to a background check.</p>	
<p>Valerie Campbell, Stepping Stones Academy</p>	<p>I feel that background checks should remain intact. Additionally, I feel that a more extensive background check should be done to include the CJIS background check with fingerprinting.</p>	<p>22 VAC 15-51-60 G allows centers to request a national background check instead of the criminal history record check (Virginia check) for employees and volunteers. National background checks were not required by the Code because of the cost of performing these checks.</p>
<p>Katie McCullough</p>	<p>I am the current president of Dulin Cooperative Preschool and on behalf of the Board of Directors I am writing to convey our support for maintaining the requirement for background checks for staff and volunteers. We have had, on more than one occasion, received unsatisfactory results from a background check, which have helped us screen our volunteers and staff. We strongly encourage the continued requirement.</p> <p>The presentation of the wording of the background check standard is cumbersome but ultimately can be deciphered. It may be helpful to simplify, if</p>	<p>DSS agrees.</p>

<p>Lisa Thomas, Deputy Director Child Development Resources</p>	<p>possible.</p> <p>CDR strongly supports the existing mandatory regulations that clearly safeguard children and do not find them to be burdensome. We believe that protecting children from potential harm is a sound investment of program resources in any child care setting.</p> <p>In our experience, however, we have found that conducting background checks for aides and volunteers under the age of 18 does not yield any useful data because those records are not currently available. We would recommend either addressing regulatory changes that permit disclosure of findings for individuals under the age of 18 or requiring background checks on only those individuals 18 and older for all staff and volunteers who are directly responsible for the care of children.</p> <p>Furthermore, there is a need to require broader (national) background checks in regard to staff and volunteers who have relocated to Virginia from other states, since a local background check through a Virginia</p>	<p>Section 63.2-1720 requires background checks for employees and volunteers regardless of age. This requirement cannot be changed by regulation.</p> <p>22 VAC 15-51-60 G allows centers to request a national background check instead of the criminal history record check for employees and volunteers. A law to require national background checks for child welfare agencies that was to become effective July 1, 2007 was not implemented due to state funds not being provided.</p>
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	database alone may not provide the required safeguards.	
Francine Ronis Vice President, VCPC	The Virginia Cooperative Preschool Council's (VCPC) position on regulation 22 VAC 15-51, Background Checks for Licensed Child Day Centers, is that it should remain as is and should not be terminated under any circumstances. We believe the regulation is clear, easy to follow, and needed as a step to protect children.	DSS agrees.
Esther Wood, Executive Director Mary Bethune Academy	For adult care, the rule is that one offense [misdemeanor] is allowed if it's been over 5 years. However, for child care the rule is ten years. Why would/should it be different? None of us want predators or people posing a threat to children in our programs. However, there should be some limitations or some latitude for judgment for investigation and decision rendering in individual situations where programs are negatively impacted by these decisions.	These requirements are in the Code and cannot be changed by regulation.
Samara Mussleman	I am in favor of amending the current background check regulation in the following way: Every 3 years prior to the 3 rd anniversary date for an employee, administrators	The Division of Licensing Programs will discuss these suggestions with a regulatory advisory panel at the time of the next proposed comprehensive revision of the regulation.

	<p>must have the updates of background checks in the file. The deadline varies employee to employee which can become extremely difficult to manage to insure the background checks are all in prior to the deadline. I would like it to be considered to establish a set deadline for all centers/all employees where in the 3rd anniversary year for licensed child day center staff, the checks must be completed and in the file. (for example, September 1st of the 3rd anniversary year or June 1st of the 3rd anniversary year). If the concern is that DSS would become overwhelmed, then perhaps centers can be assigned by month, but it remains that month and not be dependent on dynamic dates year to year.</p>	
<p>Blue Ridge Montessori School Staff and Administration</p>	<p>1. We feel that background checks are clearly necessary for the safety of our students, and do not object to the regulations per se.</p> <p>2. That being said, we feel that the regulations are not clearly written or easily understandable. They should be simplified and shortened wherever possible. Perhaps having</p>	<p>The Division of Licensing Programs will discuss these suggestions with a regulatory advisory panel at the time of the next proposed comprehensive revision of the regulation.</p>

	<p>a straight-forward, bulleted list of what is required for new employees would help. It could look like this:</p> <p><u>New Employee Requirements</u></p> <ul style="list-style-type: none">▪ Sworn Statement, to be renewed every _____ years.▪ CPS registry check, to be renewed every _____ years▪ _____ check, to be renewed every _____ years. <p>3. The name of each check should be <i>specific</i>. (such as "Virginia DSS/CPS request for search of the Central Registry and Release of Information Form"). Information about where to obtain it should be <i>specific</i>. (VA state police website, form # _____)</p> <p>4. We were recently told by our DSS inspector that the Sworn Statement needs to be renewed every 3 years. This is definitely not clear in the regulation.</p> <p>5. Break down the requirements for new employees, existing employees, substitutes and volunteers.</p> <p>6. Due to the complexity of the regulations, it is</p>	
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	<p>burdensome on extremely small businesses such as ours. It really requires a one person, dedicated to sorting out these and all other regulations....yet we can not afford to pay an additional staff member to do this work. Currently, we rely on parent volunteers to read the DSS binder and notify the staff what and when things need to done. This is why simplifying the regulations is imperative.</p>	
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No informal advisory group was formed for the purpose of assisting with the periodic review. Licensed child day centers, licensing staff, and interested parties were contacted by email for comment.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation is essential to protect the health, safety, and welfare of children in licensed child day centers. The regulation is clearly written and understandable by most of the individuals affected.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

DSS recommends that the regulation stay in effect without change.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

Families should have increased confidence in the safety of their children in licensed child day centers as a result of this regulation, which requires background checks for personnel in licensed child day centers.