



Periodic Review / Retain Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-191
Regulation title	Background Checks for Child Welfare Agencies
Document preparation date	June 18, 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 63.2-217 of the Code of Virginia (the Code) gives the State Board of Social Services authority to adopt and enforce regulations to carry out the purposes of Title 63.2 of the Code concerning Social Services. Chapter 9 of Title 63.2 contains statutes for foster care including requirements for background checks for placements of children in § 63.2-901.1. Chapter 17 of Title 63.2 contains statutes for the licensure and registration of child welfare agencies including requirements for background checks in child welfare agencies and for foster and adoptive parents in §§ 63.2-1704, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1723, 63.2-1724; and 63.2-1727.

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.

Section 63.2-1723 of the Code of Virginia mandates that regulations be adopted to implement the provisions of the section. This section pertains to waivers of disqualification of individuals seeking to operate, volunteer, or work at a child welfare agency; or of adults residing in a family day home. There are no less burdensome alternatives for achieving the purpose of this section of the regulation. An

alternative for achieving the purpose of the remainder of the regulation would be to use the Code of Virginia for enforcement of the requirements for background checks for child welfare agencies and foster and adoptive parents. However, the language of the statute would be difficult for child welfare agencies, foster and adoptive parents, 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
Leanne Kreps	Continue background checks, but allow providers to hire an individual based on the knowledge of what the person has been charged with in the past. (e.g., consensual sexual behavior with a minor is illegal. If an educated individual in their 30's was convicted of this crime as a 19 year old, it has little bearing on the safety of children in the presence of this possible qualified applicant.)	Section 63.2-1719 of the Code of Virginia defines what constitutes a barrier crime so the definition cannot be changed by the regulation.

<p>vashpaul@comcast.net</p>	<p>It is my belief that regulation 22 VAC 40-191 needs to be continued, maintained and upgraded according to our children's needs. Law makers and state license planners have an obligation to continue to protect children in all types of day care environments against all violators of the laws that's in place to protect them. Any one who chooses to work with young children in a regulated environments should not be worried about intrusive regulations, basically it should be understood to all prospective employee that there are rules/processes in place to be followed for hiring. Personally, as a Family Child Care Provider I depend upon our law makers (Governor, etc.) to continue to support the purpose behind regulation 22 VAC 40-191, because a child's security and safety needs to be our #1 priority.</p>	<p>Agency agrees that the regulation needs to be retained.</p>
<p>Wendy Short</p>	<p>I feel that background checks are of the utmost importance. However, I do feel and have been given information about the type of checks. I have heard that the FBI background checks are the best Nationwide Checks that you can achieve. However, we were not allowed to just use this background check. I was told by the FBI representative that the state checks are not as complete and that employees could have been in trouble with other states but it may not show on our current background checks?</p> <p>I think it would be good to have one standard/very efficient and thorough check that is Nationwide.</p>	<p>The Code of Virginia dictates what constitutes a background check. A law to require FBI fingerprint checks for child welfare agencies that was to become effective July 1, 2007 was not implemented due to state funds not being provided.</p>

No informal advisory group was formed for the purpose of assisting with the periodic review. Child welfare agencies 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 receiving care from child welfare agencies and from foster and adoptive parents.

The regulation is clearly written and understandable by the individuals affected.

Result

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

The agency is recommending 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 as a result of this regulation that contains requirements for background checks for licensure of family day homes, family day systems, child-placing agencies, and independent foster homes; for approval of family day homes by family day systems and for approval of foster and adoptive homes by child-placing agencies; for voluntary registration of family day homes; and for religious exemption of child day centers.