



# COMMONWEALTH of VIRGINIA


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## MEMORANDUM

**TO:** KARIN CLARK  
Virginia Department of Social Services

**FROM:** Jennifer C. Williamson   
Senior Assistant Attorney General

**DATE:** July 9, 2020

**SUBJECT:** Final Stage Review of 22 VAC 40-665  
Amend Background Checks to Comply with Code Requirements

I have reviewed the attached regulation, which is being amended to comply with Chapter 936 of the 2020 Acts of Assembly, to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulation and whether the specified regulation comports with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. Consequently, it is my opinion that the State Board has the authority to promulgate this regulation, which is exempt from the provisions of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(a), and the State Board has not exceeded that authority.

If you have any questions, please feel free to call me at 225-3197.

**Project 6435 - Final**

**DEPARTMENT OF SOCIAL SERVICES**

**Criminal History Search for Child Care Providers**

**22VAC40-665-180. Caregiver records.**

The following records shall be kept for each caregiver:

1. Name, address, verification of age, and date of employment or volunteering.
2. Documentation that background checks were completed, including:
  - a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:
    - (1) Satisfactory results of the fingerprint-based national criminal background check;  
and
    - (2) Satisfactory results of the Virginia Child Protective Services Central Registry check.
  - b. Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.
  - c. Results of a criminal history record information check and sex offender registry check from any state in which the person has resided in the preceding five years.
  - e-d. The individual's sworn statement or affirmation as to whether the individual has ever been:
    - (1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges with the Commonwealth or any equivalent offense outside the Commonwealth.

d.e. The vendor shall have such documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service.

e.f. Documentation of subsequent background checks conducted every five years.

3. Tuberculosis screening results.

4. Certifications for first aid, cardiopulmonary resuscitation, and other certifications as required by the responsibilities held by the caregiver.

5. Documentation that training required by 22VAC40-665-230 has been completed that includes the name and topic of the training, the date completed, the total hours of the session, and the names of the organization that sponsored the training and of the trainer.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-190.

**22VAC40-665-530. Staff records.**

The following records shall be kept for each staff person:

1. Name, address, verification of age, and date of employment or volunteering.

2. Documentation that background checks were completed, including:

a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:

(1) Satisfactory results of the fingerprint-based national criminal background check;

and

(2) Satisfactory results of the Virginia Child Protective Services Central Registry check.

b. Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.

c. Results of a criminal history record information check and sex offender registry check from any state in which the person has resided in the preceding five years.

~~e.d.~~ The individual's sworn statement or affirmation as to whether the individual has ever been:

(1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth.

~~d.e.~~ The vendor shall have documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service.

~~e.f.~~ Documentation of subsequent background checks conducted every five years.

3. Tuberculosis screening results.

4. Certifications of first aid and cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.

5. Documentation that training required in 22VAC-665-580 has been completed, including the date completed, the total hours of the session, and the names of the trainer and of any sponsoring organization.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-540.