



Final 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
Action title	Changes to conform with Code of Virginia
Document preparation date	May 13, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This action will repeal 22 VAC 15-50-10 et seq. and adopt 22 VAC 15-51-10 et seq. The current background checks regulation went back into effect on May 18, 2000, at the end of effective dates for an emergency regulation resulting from passage of SB 419 and HB 1388 during the 1998 session of the General Assembly. This proposed regulation incorporates relevant Code of Virginia (Code) changes from 1995 to the present time, including recodification of Title 63.1 of the Code during the 2002 session of the General Assembly. It adds sections, reorganizes content, uses more descriptive headings, and increases use of the active voice to increase clarity of the regulation. It responds to questions and comments about background checks that have been received during the past several years.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Child Day-Care Council approved final action on 22 VAC 15-51, Background Checks for Licensed Child Day Centers, on May 13, 2004.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code, at §§ 63.2-1734 and 63.2-1735, gives the Child Day-Care Council the statutory authority to adopt regulations for the operation of licensed child day centers in Virginia. Code sections §§ 63.2-1719, 1720, 1721, 1722 and 1723 establish background checks and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect. The regulation is necessary to implement the required Code provisions.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The major purpose of the replacement regulation is to incorporate relevant changes in the Code since 1995. The other major purpose is to strengthen the regulation by addressing issues that have been raised during the past several years, and by reorganizing and adding sections to make it more functional. The changes protect the health, safety and welfare of children by strengthening background check requirements for individuals who are associated with a child care setting.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The primary Code changes reflected in the proposed regulation are:

1. Expanding the list of crimes that are barriers to operating, working or volunteering at a child welfare agency;
2. Including prior adult convictions, and certain juvenile convictions and adjudications of delinquency as offenses;
3. Clarifying that manslaughter is a barrier crime;
4. Mandating the search of the child abuse central registry;

5. Adding a founded complaint of child abuse or neglect as a prohibition to licensure, employment, volunteering, or being an applicant or agent;
6. Requiring that a person denied licensure, employment, or staff volunteer status due to a background checks result be given a copy of the relevant finding;
7. Referencing a waiver of disqualification due to certain criminal convictions, as identified in Title 63.2 at 63.2-1723;
8. Introducing the phrase “background checks” to mean a sworn statement or affirmation, a criminal history record check, and a search of the central registry;
9. Limiting volunteers required to obtain background checks to those who will be alone with any child in the performance of their duties;
10. Limiting employees required to obtain background checks to those involved in the day-to-day operation of the licensed child day center or who are alone with, in control of, or supervising one or more children;
11. Deleting the requirement that board members, upon application for licensure, must obtain background checks unless the board member functions in another capacity that requires the checks;
12. Clarifying that only the applicants of licensed child day centers and those persons who are agents at the time of application must have the background checks completed prior to being involved in the day-to-day operations of the center or being alone with, in control of, or supervising one or more of the children;
13. Changing the time period for obtaining criminal history record check records and central registry findings from 21 days to within 30 days; and
14. Clarifying that an employee or volunteer may continue to work or provide services if the criminal history record request or request for search of the central registry was submitted within seven calendar days of the person beginning employment or volunteer service, but the report or finding is not returned within 30 calendar days.

Other changes include additions that further explain the background check process. Among these are:

1. Having a separate regulation for licensed child day centers;
2. Reorganizing the document so the sworn statement or affirmation, criminal history record report, and central registry finding do not duplicate the same statements and make the document longer;
3. Where applicable, changing the word “shall” to “must,” “will,” or “may,” as approved by the Office of the Registrar; and
4. Adding sections describing who isn’t covered by the regulation; explaining requirements for satisfactory background checks; explaining the consequences of unsatisfactory background checks findings; and describing the waiver of criminal conviction.

There are also content changes that reflect current practice or are responsive to questions from the public and facilities. These include, but are not limited to:

1. Allowing satisfactory background checks for contract employees to be accepted if dated less than six months prior to when the contract agencies begin to provide services at facilities;
2. Accepting a copy of the central registry finding;
3. Providing that a background check remains valid at a licensed child care center as long as no more than 12 months have passed from when the person began a leave of absence, was terminated from employment from the center, or was transferred to a center owned and operated by the same employer or entity;

4. Allowing a person who leaves a licensed child day center to take the criminal history record report or central registry finding, if the report or finding is less than 91 days old, provided that the center keeps a copy of any report that was taken and writes on the copy of the report that it is a copy;
5. Requiring background checks every three years from the dates of the previous checks;
6. Providing a schedule for implementation of repeat background checks;
7. Clarifying that the Department has the right to revoke or deny licensure based on background checks results or failure to obtain background checks;
8. Providing that the Department may require a new background check relevant to a suspicion of a barrier crime conviction, a felony conviction, or a founded complaint of child abuse and neglect;
9. Allowing satisfactory background checks for contract employees and substitute staff from temporary agencies to be viewed, accepted, and copies maintained;
10. Permitting the Department to release information about disqualifying backgrounds to licensed child care centers that are covered by this regulation; and
11. Informing the person that a search of the central registry and a criminal history record are being requested.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The public is expected to benefit from this regulation. The requirements that reflect the Code, and the other requirements, offer protection for children who receive care in licensed child day centers during a portion of the day. The centers covered by this regulation will have increased flexibility to shift staff and use contract staff without obtaining repeat background checks, but all persons will be required to resubmit checks every three years to assure availability of updated background information. There are no disadvantages to the public or Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
10	“Agent” means a person who acts on behalf of, or is an employee or staff volunteer with, a child welfare agency.	A reference to licensed child day center replaces a reference to child welfare agency. This change is in response to public comment.

10	“Barrier crime” means... assaults and bodily woundings....	“Assault” in the barrier crime definition is made plural to conform to Code of Virginia language.
10	“Involved in the day-to-day operations” means (i) in a supervisory...or (ii) counted by the center for purposes of staff-to-children ratio.	Having access to child and family records unless the person is operating under authority of a court order is added to the definition. This change is in response to public comment.
10	“Licensed” means having met the requirements...as required in General Procedures and Information for Licensure (22 VAC 15-80).	The citation is corrected. This is a technical change.
10, etc.	10 Definition of “staff volunteer”; 40 B third and fourth rows, first column; 50 A, first sentence; 60 B, first sentence; 60 C, first sentence; 60 C 1; 60 C 2; 60 D, twice in first sentence; 60 F; 60 G, first sentence; 60 G 1;70 A; 70 D, second sentence	The term “staff volunteer” is changed to “volunteer” throughout the document. This change is in response to public comment, and to correspond to Code of Virginia and licensed child day center regulation language.
10, etc.	“Parent-staff volunteer” means...a group of children that includes the parent-staff volunteer’s...provided that the parent-staff volunteer....	“Parent-staff volunteer” is changed to “parent volunteer” throughout the document. This change is in response to public comment and to conform to Code of Virginia language.
10 et seq.	10 et seq.	Additional outline subdivisions are added to accommodate the requirements of the computerized inspection tool used by licensing inspectors.
20	The background checks covered by this regulation are: 1. Sworn statements of affirmations; 2. Criminal history record checks; and 3. Central registry searches.	Grammar and spelling were changed. These were technical changes in response to public comment.
30	All child welfare agencies that are not centers....	Reference to licensed centers was added. This is a technical change for clarification
40 B 1	Any: Applicant....	The beginning of this table was reformatted. This is a technical change in response to public comment.
40 C	New person designated as applicant, licensee, or agent who is or will be involved in the day-to-day operations....”	Clarification was added to refer to a new person without current background checks. This change is in response to public comment.
40 C	Prior to first day of employment at the center	Clarification was added that this requirement refers to employment in a particular capacity. This clarification is in response to public comment.

40 C	Before 30 days of employment at the center ends	Clarification was added to reference each particular employment capacity. This clarification is in response to public comment.
40 C	Prior to first day of service at the center	Clarification was added to reference service in each capacity at the center. This clarification is in response to public comment.
40 C	Before 30 days of service at the center elapses	Clarification was added to reference 30 days of service in each particular capacity. This clarification is in response to public comment.
40 C	Any employee of a center who is involved....	Future involvement with children is added. This is a technical change in response to public comment.
40 C	Staff volunteer at a center who will be alone....	The current tense is added. This is a technical change in response to public comment and to reflect Code language.
40 C	Any individual who will have access....	Language is added to include present involvement with children. This is a technical change in response to public comment.
40 C*	(table)	(Following table) A phase-in of repeat checks is added. This explanation is provided to clarify how repeat background checks will be initiated.
40 D	(no "4")	Clarification is added that contract employees must adhere to the same repeat background checks requirements that apply to other employees. This change is in response to public comment.
40 E	(no "1")	A requirement is added that the sworn statement or affirmation must always be an original. This clarification is in response to public comment.
50 A	A satisfactory criminal history record check report is one in which: 1. an original hard copy or internet inquiry reply from the Department of State Police is returned to the center with either no convictions indicated	The word "either" is deleted because it is unnecessary. This is a technical change.
50 B 3	2. A background check remains valid at a center if no more....	A clarification is added that a background check doesn't remain valid if there is a criminal conviction or a founded complaint of child abuse and neglect during a 12 month period of absence. This change is in response to public comment.
70 A 2 b	b. Are copies of the sworn disclosure statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original,	Sworn disclosure is changed to sworn statement to conform to the Code of Virginia. Clarification is added that the child protective services finding may be either an original or a copy. These are technical changes in response to public comment.

70 B	and the child protective services central registry check. B. Centers must keep all background check information for one year...	B. The time frame is changed to two years to be consistent with the licensed child day center regulation.
70 D	D. If a person is denied licensure because of background checks information, the center must provide a copy....	Corrections are made to explain that a center may be denied licensure and the disqualified person must be presented with a copy of the documentation. These are technical changes in response to public comment.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
Manager licensed child day center	Do not change the current regulation	Most of the changes are required due to changes in the Code of Virginia.
Manager licensed child day center	Deregulate all laws regarding child care centers because a waste of time and money and rarely do any good	The Code of Virginia requires regulation of licensed child day centers.
Manager licensed child day center	[Proposed regulation] is appropriate for our preschool; background checks are a necessity	Thank you for the comment.
Form letter from three individuals	<p>22 VAC 15-51-40 B Clarify why re-checks are required</p> <p>Clarify who will be responsible for the cost.</p> <p>Clarify rationale for [adding re-checks requirement] when the current background check is worthless for people being employed from out-of-state. 22 VAC 15-51-40 D</p> <p>Clarify if a person needs a new check upon assuming a new role in the facility.</p> <p>Clarify if a person newly designated to be alone with children needs a new check</p>	<p>The re-checks are added to protect the health, safety and welfare of children.</p> <p>Facilities determine who will be responsible for the cost – no change.</p> <p>The Code of Virginia requires only an in-state name search check.</p> <p>The regulation is revised to add in the first column, second row, the provision “without current background checks.”</p> <p>The regulation is revised to add in the first column, third row, the provision “without current background checks” at the end of both requirements.</p>

	<p>(e.g., promotion from aide to teacher)</p> <p>22 VAC 15-51-60 D Look at the numbering A.1.2.3.1.2.1.2 The requirement to submit [background checks requests] within 7 days or be in violation is inconsistent with other paperwork requirements in regulation. Since the first three weeks are often a trial period to see if the employee is compatible with the organization, please keep the current 21 day requirement. 22 VAC 15-51-60 G 2</p> <p>Does the statement “a center that does not comply with this regulation may have its license revoked or denied” mean that, if paperwork is not submitted within seven days for any reason, the licensed could be revoked? What happens when a center is closed for holidays or vacation closings?</p>	<p>The regulation published in the <u>Virginia Register</u> does not have this numbering. This requirement explains the conditions in which a facility will have relief from the <u>Code of Virginia</u> requirement to have background checks results within 30 days.</p> <p>The Code of Virginia requires background checks results within thirty days, unless the requests were submitted in a timely manner, in which case there is no violation for not receiving them within thirty days. The seven days is the “timely manner.”</p>
<p>Voices for Virginia's Children</p>	<p>Support children’s safety as a priority.</p> <p>Support positive changes not specifically identified.</p> <p>22 VAC 15-51-10 Change reference from “child welfare agency” to “center” in definition of agent.</p> <p>Refer to §63.2-1719 of the Code of Virginia instead of enumerating the barrier crimes.</p> <p>Include in the definition of “involved in the day-to-day operations” those persons who has access to child or family-related or personnel records and/or be consistent in the definition with the requirement at 22 VAC 15-51-40 C that</p>	<p>Thank you for the comment.</p> <p>Thank you for the comment.</p> <p>The regulation is revised to provide this clarification.</p> <p>The list is retained to retain maximum usefulness to potential providers and volunteers. Subsequent Code of Virginia-mandated changes in a regulation can be incorporated without going through the Administrative Process Act (APA) procedures.</p> <p>The definition is changed to include individuals who will have access to child and family records, unless the individual is operating under authority of a court order.</p>

	<p>individuals who will have access to child and family records must provide background checks, unless the individual is operating under authority of a court order.</p> <p>Correct the APA citation for General Procedures and Information for Licensure in the definition of “licensed.”</p> <p>Delete unnecessary quotation marks at the end of the “licensee” definition.</p> <p>Use the term “volunteer” to be consistent with the regulation Standards for Licensed Child Day Centers.</p> <p>Define the term “aide.”</p> <p>22 VAC 15-51-20 Use the singular to refer to each of the background checks.</p> <p>Require a check of the Sex Offender and Crimes Against Minors Registry or provide technical assistance to centers on how to conduct a search of this registry.</p> <p>22 VAC 15-51-40 Support rechecking a person’s background. Recommend rechecking every two years instead of every three years. Recommend rechecking every year if the fees can be reduced.</p> <p>At 40 B 1, delete the colon after “any.”</p> <p>At 40 C, use “is or will be” in second, third, and fifth rows</p>	<p>The citation is changed to 22 VAC 15-20-10 et seq.</p> <p>There are no quotation marks at the end of this definition in the official version that appeared in the Virginia Register.</p> <p>The term “staff volunteer” is deleted and replaced with the term “volunteer” that appears in the proposed Standards for Licensed Child Day Centers, the current regulation, and the Code of Virginia. The term “parent staff volunteer” is deleted and replaced with the term “parent volunteer” found in the Code of Virginia.</p> <p>The term is not defined in this regulation because it is a subset of “employee” and all employees must abide by the regulation, regardless of age.</p> <p>Each background check is changed to the singular form for clarity.</p> <p>The Code of Virginia does not provide for this check for centers. The crimes are all Virginia barrier crimes; all Virginia convictions would be noted on the Virginia Criminal History Record Report. The Department has included technical assistance on how to conduct a search the “Sex Offender and Crimes Against Minors Registry for Violent Sex Offenders Registry in the February 2004 technical assistance mailing and added a link at the Department’s website</p> <p>Thank you for the comment. The suggestion for reducing fees will be shared with administration officials.</p> <p>The colon is deleted for clarification.</p> <p>The phrase “is or will be” is inserted in the second and third rows for clarification and the phrase “has</p>
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	<p>under “who.”</p> <p>At 40 C, insert “staff” between “parent” and “volunteer.” At 40 C, under “when” column use consistent formatting for the three background checks.</p> <p>At 40 D 1, clarify that the required background checks are those required per this regulation.</p> <p>At 40 D 2, specify how long the contract employee’s background checks are effective.</p> <p>At 40 D and E, specify sworn statement or affirmation.</p> <p>22 VAC 15-51-50 At 50 B, correct the numbering.</p> <p>Indicate that juvenile records cannot be released and that the age for aides be raised to age 18.</p> <p>50 A, add “licensee” to the listing in the first sentence.</p> <p>Suggest that the reference in 50 A 3 to sworn statement or affirmation is inaccurate.</p> <p>50 B 2, add at the end of this section the statement “unless there is a criminal conviction or founded complaint of child abuse and neglect during that period.”</p>	<p>or” is added in the fifth row.</p> <p>The term “parent volunteer” is defined as used in conformance with the Code of Virginia. This is the formatting used in the Virginia Register. The regulation distributed after final approval will not have this spacing.</p> <p>The statement at 40 D 1 that background checks must be obtained according to requirements for employees or the originals must be viewed provides sufficient explanation.</p> <p>Clarification is added in a new section 40 D 4: “Provide a sworn statement or affirmation, search of central registry and criminal history record check before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.”</p> <p>Section 40 D specifies “background checks” and this term includes the sworn statement or affirmation. 40 E is changed to provide that the person must furnish an original sworn statement or affirmation even if the criminal history record report and/or central registry finding is less than 90 days old, except for contract employees or employees of contract agencies..</p> <p>The numbering reflects current formatting.</p> <p>The age for aides is under the purview of the Standards for Licensed Child Day Centers. The records for teenagers who are tried as adult will appear in the CCRE, regardless of the individual’s age.</p> <p>The definition of “agent” includes licensee because a licensee acts on behalf of a center.</p> <p>To be satisfactory, the sworn statement or affirmation must accurately indicate no disqualifying convictions or founded central registry complaints. If there is other knowledge than that submitted, the statement/affirmation would not be satisfactory.</p> <p>This statement is added at the beginning of the sentence for clarification.</p>
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	<p>50 B 2, do not allow a background check to remain valid for 12 months when a person began a leave of absence or was terminated from employment at [the] center.</p> <p>22 VAC 15-51-60 60 A, clarify if “applicants” refers to initial licensure.</p> <p>60 G, failure to have out-of-state conviction data may place children at risk. The cost for background checks can be significant. Recommend that the Council urge the Department to consider a request to amend the Code of Virginia so the criminal history record check fee be the same for child care as it is for firearms purchases. Institute the requirement for nationwide background checks at the same cost to which they are available to the purchasers of firearms.</p> <p>60 G, include the full citation referencing the ability to require a background check from another state.</p> <p>22 VAC 15-51-70 70 A 2 b, change reference from “sworn disclosure statement” to “sworn statement.”</p> <p>70 A 2 b, change reference from “central registry check” to “central registry finding.”</p> <p>70 C, delete or change the reference to “agents,” since agents could include any employee or staff volunteer.</p> <p>70 D, change “center” to “Department” to indicate who informs a person of denial of licensure.</p>	<p>Thank you for the comment. The Council believes there would be sufficient protection for children.</p> <p>The meaning of “applicants” is clarified in sections 10 and 40.</p> <p>These recommendations will be forwarded to the Department for possible consideration as legislative proposals, since the current provisions reflect Code of Virginia provisions.</p> <p>The full citation appears in the official copy of the regulation published in the Virginia Register.</p> <p>This clarification is made for consistency.</p> <p>This clarification is made for consistency.</p> <p>Facility policy is sufficient to indicate which agents may have access to background check information.</p> <p>The wording is changed to clarify that a center denied licensure must inform the person whose disqualifying background resulted in the denial.</p>
<p>Preschool director and parent –</p>	<p>Applaud repeat checks every three years.</p>	<p>Thank you for the comment.</p>

Richmond public hearing	Question need for another check for a contract employee who has been working at another center.	This corresponds to the requirement for repeat checks for employees who switch centers after 90 days have passed, but is less stringent because of the unique nature of contract employees/agencies.
Child care provider – Roanoke public hearing	Believes repeat background checks would be very costly. Wants clarity on the word “new” employee.	The costs are balanced by eliminating background checks for board members and for certain employees and volunteers. “New” means a new employee at a center. The regulation provides an exception when the new employee brings a central registry finding or criminal history record check report that is less than 91 days old.
Chair of Early Childhood Commission – Alexandria public hearing	Indicates that background checks every three years may limit funds being used in other areas within a center.	The three-year time frame is an attempt to balance safety and financial considerations. The cost of repeat checks is offset by providing for the elimination of background checks for board members and for certain employees and volunteers.
Center van driver – Abingdon public hearing	Indicates that background checks information should only be for violations in the last three years, as is the case with insurance companies.	It appears that this commenter is referencing traffic violations rather than barrier crimes or felony convictions in the last five years.
Person associated with small center – Richmond public hearing	Consider repealing background checks.	Background checks are required by the Code of Virginia.
Private nonprofit service agency	Believe there will be no record on a staff person younger than 18 years of age.	If the person has been tried as an adult, there will be a record.
Individual, no category identified	Repeal proposed regulation for three year repeat background checks.	The repeat checks are added to protect the health, safety and welfare of children.
Five employees, one grandparent, and one church administrator as part of identical list of items	Believe background checks should not be required every three years.	The three-year time frame is an attempt to balance safety and financial considerations.
Center operator	Add “aide” in the first column at 51-40 C. Explain the repeat background checks requirement.	This is unnecessary because agent is included and the definition of agent in 51 10 includes “employee.” An aide is an employee. Further information will be provided as technical assistance as necessary to implement this requirement.
Alliance for Choices in Child Care	Look at the numbering at 51-60 D. 51-60 D Recommend retaining the 21 day requirement for background	The numbering at 51 60 D is “1” and “2” and then proceeds to “E.” This appears to infer that a center is not submitting requests for background checks until after the 21 st day of employment. The Code of Virginia requires

	<p>checks for new employees because the first three weeks is often a trial period.</p> <p>51-60 G 2 Does the provision “A center that does not comply with this regulation may have its license revoked or denied” mean revocation could occur if paperwork is not submitted with [in] seven days?</p>	<p>that they be returned by the 30th day of employment. Waiting until after the 21st day does not meet the Code of Virginia requirement that they be submitted “timely.”</p> <p>The sentence in question is not indented to indicate that it is part of the subdivision “G 2.” The reference is to the entire regulation.</p>
N VA Waldorf School Initiative	<p>Suggest that periodic review of continuous employees not be required.</p> <p>Suggest that the checking agencies be required to accept checks from licensees that have been in business for 1 year or more.</p>	<p>The three-year time frame is an attempt to balance safety and financial considerations.</p> <p>The Department of Social Services stopped accepting personal checks about five years ago, after incurring a loss of several hundred dollars that couldn’t be recovered. The State Police does not accept personal checks, but does accept business checks. Personal checks are not accepted because of previous experience with returned checks.</p>
Individual; no category identified	<p>Suggest a single repository of information for both child protective services and criminal conviction data; alternatively, allow a name review at either DSS or State Police to be sufficient.</p>	<p>The first suggestion will be shared with the Departments of Social Services and State Police. The Code of Virginia does not allow the alternate suggestion.</p>

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		<p>Definition of “agent”</p> <p>Definition of “applicant for licensure or registration”</p>	<p>Added Rationale: Separating the definitions of “agent” and “applicant” make clear that agent is a person who acts on behalf of, or is an employee or volunteer with a licensed child day center; the term is not confined to applying for a license.</p> <p>Changed to separately define “applicant” and “agent,” deletes officers of board because they are no longer required to obtain background</p>

			<p>checks by virtue of their office. In the case of sole proprietorship, the applicant is the individual owner. In the case of partnership, corporation, limited liability company, public agency or similar entity, the applicant designates at least one individual and must include all individuals who will be on site exercising direction over the operation. The ability to designate one individual in certain circumstances eases restrictions, but maintains provisions for on-site persons. Rationale: Separating definitions makes the document clearer.</p>
		Definition of “background checks”	<p>Added Rationale: This is the new title for Article 3 of Title 63.2, Subtitle IV, Chapter 17 in the Code of Virginia.</p>
		Definition of “barrier crime”	<p>Changed from a general description, and the list from the 1995 Code, to the current list of convictions identified in the Code. Rationale: The definition complies with the Code of Virginia.</p>
		Definition of “center”	<p>Added to mean licensed child day center. Rationale: Adding the definition decreases wordiness throughout the document.</p>
		Definition of “central criminal records exchange”	<p>Changed to delete information about the Virginia State Police Rationale: Information about the Virginia State Police now appears in 22 VAC 15-51-20, where it is more functional.</p>
		Definition of “central registry finding”	<p>Added Rationale: Adding the definition provides an explanation of the Code phrase “information from the central registry.”</p>
		Definitions of “commissioner,” “department,” “department representative,” “local agency,” “may,” “must not,” and “must”	<p>Added Rationale: Adding the definitions makes the document more readable for persons unfamiliar with state government. “May,” “must,” and “must not” are precisely defined and allow elimination of the term “shall” that is not used in everyday speech.</p>
		Definitions of “contract agency” and “contract employee”	<p>Added Rationale: Adding the definitions provides clarification about certain occasional employees.</p>
		Definition of “criminal history record check”	<p>Added Rationale: This reflects Code of Virginia</p>

		terminology.
	Definition of “criminal record report”	<p>Changed to “criminal history record report” to explain how the Virginia State Police checks on convictions and what the agency does after checking the criminal history record. Information about the data provided is moved to 22 VAC 15-51-20.</p> <p>Rationale: The changed definition complies with the Code of Virginia and the moved information is in a more functional location.</p>
	Definition of “disqualifying background”	<p>Added</p> <p>Rationale: The definition makes the link between an unsatisfactory background check and the ability to own, operate, work at, or volunteer at a licensed child day center.</p>
	Definition of “facility”	<p>Deleted</p> <p>Rationale: A term no longer used in the document is eliminated.</p>
	Definition of “involved in the day-to-day operations”	<p>Added to mean any individual who is in a supervisory or management position making daily decisions regarding the operation of the center, counted by the center for purposes of staff-to-child ratios, or has or will have access to child and family records except if operating under authority of a court order.</p> <p>Rationale: The reader has a definition for a term used in the regulation and the Code.</p>
	Definition of “licensee”	<p>Added</p> <p>Rationale: Readers will be aware of the categories the Code is referencing when the word “licensed” is used.</p>
	Definition of “licensed”	<p>Changed by updating Code references.</p> <p>Rationale: The term complies with the Code of Virginia.</p>
	Definition of “officer of the board”	<p>Deleted</p> <p>Rationale: This term is now unnecessary, per revisions to the Code of Virginia.</p>
	Definition of “other felony”	<p>Added</p> <p>Rationale: The full explanation is not necessary every time the regulation means conviction for any felony in the last five years that is not a barrier crime felony.</p>
	Definition of “parent volunteer”	<p>Changed only by updating Code references.</p> <p>Rationale: The changed definition complies with the Code of Virginia.</p>

40 B		issuance of an initial license Requirement that a criminal record report be provided on or before the 21 st day of employment	Rationale: The requirements are in compliance with the Code of Virginia. Timeframe changed to “within 30 days.” Rationale: The change complies with recodification language and appears with all the other requirements for specific stages in the background checks process.
40 B	40 C	Requirements for volunteers	Changed to indicate that parent-volunteers are exempt. Rationale: The regulation complies with the Code of Virginia.
40 B		Exception that criminal record reports must be obtained prior to approval	Deleted Rationale: This regulation no longer pertains to approved facilities.
40 C	60	Provision that a person is ineligible for employment, volunteer service, or any facility-related activity if the report contains convictions of the barrier crimes	Moved to 22-51-60. Language is changed from “any facility related activity” to persons who are “involved in the day-to-day operations of such agency or who are alone with, in control of, or supervising one or more children.” Rationale: The information is included with other information related to the consequences of unsatisfactory background checks and complies with current Code of Virginia language.
40 E	70 C	Requirement that reports on employees and volunteers be received only by the facility administrator, board president, licensee, registered provider, or their designee	Changed to provide that applicants and administrators, and their designees, are the only center staff who may have access to these documents. Rationale: This change places the information with other content related to keeping background checks records. The change reduces words by using the already-defined term “applicant” instead of listing all the entities that are considered applicants, and it gives applicants and administrators the discretion to designate those who may have access to confidential documents, but deletes the board president from this list.
40 E	40 E and F	Requirement that criminal record report not be accepted if dated more than 90 days prior to date of employment or volunteer service	Changed, and separated into 40 E and F. “E” refers to centers accepting checks and adds date of application. “F” refers to the department and indicates 90 days prior to the date of licensure, or from the date when the person who is designated as the applicant of licensee changes. Rationale: This change clarifies the 90 day requirement for centers and the department.
	40		This whole section is restructured. Part “A”

	<p>40A</p> <p>40 B</p> <p>40 C</p>	<p>References to facilities that are not licensed child day centers</p>	<p>specifies that the regulation applies only to centers. Rationale: The statement makes clear that the regulation applies only to licensed child day centers. Part “B” lists the background checks required to licensed child day centers at the time of application. Part “C” lists the background checks requirements after initial licensure. Part “D” provides requirements for contract employees and employees hired by contract agencies. Parts “E” and “F” explain that reports and findings must be current to be accepted by a center or the department. Rationale: The restructuring makes it easier for the reader to comply with requirements because they are listed by the stage in the background checks process.</p> <p>Deleted Rationale: There is clarification that this regulation addresses the category of child care for which the Child Day-Care Council has authority to promulgate regulations.</p> <p>Provision added that any agent at the time of application who is or will be involved in the day-to-day operations of the licensed child day center or who is or will be alone with, in control of, or supervising one or more children must submit background checks upon application for licensure Rationale: Because “agent” is defined in the regulation, the reader will know whom the Code references regarding being alone with, in control of, or supervising one or more children. The language complies with the Code of Virginia.</p> <p>Provision added that a sworn statement or affirmation must be submitted whenever a new person is designated in the capacity of an applicant, licensee, or agent who is or will be involved in the day-to-day operations of the licensed child day center or who is or will be alone with, in control of, or supervising one or more of the children. It also applies to anyone who will have access to child and family records, except those individuals operating under authority of a court order. The search of the central registry and criminal history record check must be completed before the end of 30 days after the change. Rationale: This clarifies that the requirements for an applicant, licensee, registrant, approved individual, and agent applies to anyone who fits any of those categories at any time.</p>
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	40 D 4		<p>of originals in center files. It allows centers the choice of applying the same criteria for background checks that the regulation requires for all other employees. In addition, it requires centers to accept background checks results dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at the center rather than requiring new checks if the current ones are more than 90 days old.</p> <p>Clarification added that contract employees and employees of contract agencies must provide the three background checks before three years since the dates of the most recent background checks.</p> <p>Rationale: This clarifies that these employees must adhere to the same repeat background checks requirements that apply to other employees.</p>
	40 E		<p>Added to provide that sworn statements or affirmations must be originals, except for contract agencies, as found in 40 D.</p> <p>Rationale: This provision makes clear that sworn statements or affirmations must be originals.</p>
50 A	40 C and 50 A	Contract agencies and facility staff accept only original criminal record reports	<p>Moved to 40 C and 50 A. and changes made: 1) center staff must have viewed originals from contract agencies/employees and then may make and keep copies on record, and 2) the report is changed to "criminal history record report."</p> <p>Rationale: The description of all satisfactory background checks results is in the same place. There is a convenience for contract employees/agencies, but center staff will still see the original report. The title is consistent with Code of Virginia language.</p>
50 A	40 C 3	Allows facilities using temporary agencies to keep a letter verifying receipt of the criminal [history] record report, requires the report to be on file at the temporary agency, and requires that the report does not contain barrier crimes	<p>Letter deleted and replaced with the provisions for contract agencies found in 40 C 3.</p> <p>Rationale: The requirements are now the same for all entities providing occasional care at centers.</p>
50 A		Letter maintenance and requirements	<p>Deleted, since the letter is deleted.</p> <p>Rationale: Unnecessary information is deleted.</p>

50 B	50 B 3	Requirement to match name, social security number, and date of birth to some other form of identification and require a new criminal check if the information does not match	Deleted, and verification expanded by requiring any of the three background checks to be repeated if there is a suspicion that someone has a barrier crime, any felony within the last five years, or a founded complaint of child abuse and neglect. Rationale: The Virginia State Police has procedures for any individual who believes his criminal history record report is incorrect. Section 50 B 3 includes provisions in those instances in which there is a question about a satisfactory background check.
50 C	40 C	Criminal [history] record report valid as long as the [person] remains in continuous service at the same facility	Changed and expanded to provide that repeat checks are required before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report. It pertains to any applicant, licensee, agent, employee, or volunteer required to have background checks. Validity of checks results is also covered at 40 C. Rationale: The regulation now includes all Code of Virginia-required background checks. It increases protection to a vulnerable population by requiring resubmission of background checks every three years.
50 D	40 C	Requirement that a new criminal record report and sworn disclosure statement are required when an individual stops employment or volunteer work at one facility and goes to another facility	Changed to reflect the new Code terminology "criminal history record report" and "sworn statement or affirmation." Rationale: The language is consistent with current Code terminology. The new placement reflects the current additional requirement for searches of the central registry.
50 D	50 B 1		Added to allow a person to take with him any criminal history record report or central registry finding that is less than 91 days old. In this case, 1) a copy of the report must be made and 2) a notation made that it is a copy and that the original of any criminal history record report was verified. Rationale: This is a cost-savings to anyone required to furnish background checks because the person may go to another location within 90 days and take the current background checks results with him. The impact on child safety is minimal because the effective time period is only three months.
50 D	40 B 6	Exceptions about taking a leave of absence no longer than six months or	Moved to 40 B 6 and changed to provide that a background check remains valid as long as the period of separation does not exceed 12

		transferring to another facility owned by the same entity within 30 days	months from when a person a) began a leave of absence at that center, b) was terminated from employment at that center, or c) was transferred to a center owned and operated by the same employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period. Rationale: The information is now easier to find because it is located in the section describing when the three background checks are required. It will be a cost savings to employers. They will be able to bring back former employees, or move them to other centers they own or operate within a year without having to obtain another set of background checks.
60 A	70 A	Provisions that original report be maintained at the facility	Moved and expanded to provide that records and findings must be kept at the location where the person is the applicant, agent, employee, contract employee, volunteer, or is any other adult who is involved in the day-to-day operations of the center or alone with, in control of, or supervising one or more children. Rationale: Information about maintenance of background checks appears in the sequence in which it occurs in the background checks process. Confusion is avoided by listing those affected by the requirement.
60 A	70 A	Provision that the original criminal record report be maintained at the facility when the person is employed, volunteers or is approved	Changed by providing a choice when a center is among two or more owned by the same entity. The choice is that the background checks records may either be kept at corporate headquarters or at the center where the person is working. In either case, they must be available to the department representative upon request. Rationale: The department representative has access to background checks records, but the owner can decide which is the better place to keep records.
	50 50 A	This is a new section	Section added to provide requirements for satisfactory background checks results. Part "A" provides that a satisfactory sworn statement or affirmation is a fully completed original stating that the person does not have a criminal conviction that is a barrier crime or any felony conviction within the last five years. It also includes a statement that the person is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. It includes two Code caveats: 1) criminal convictions include prior adult

	60 D		<p>requesting background checks.</p> <p>There is an exception at “D” that allows an employee or volunteer to continue to work or provide service in a licensed child day center if the center has documentation that the criminal history record request or the request for search of the central registry was submitted within seven calendar days of the person being employed or volunteering, even if the report is not returned within 30 calendar days. Within five working days after the 30th day, the requestor must contact the Central Criminal Records Exchange of the Virginia State Police, or the Child Protective Services Unit of the Department to verify receipt of the request. If the request was not received, the requestor must submit another request within five working days after the contact.</p> <p>Rationale: Centers will understand that they have protection from administrative not of their own making, but this is true only if they submit requests in a timely manner.</p>
	60 E		<p>Part “E” specifies that, if the department of a local agency becomes aware that a person covered by this regulation has a disqualifying background, the department or local agency may release this information to licensed child care centers.</p>
	60 F		<p>Part “F” requires licensed child day centers to inform compensated employees and volunteers that the centers are requesting child protective services registry checks and criminal history record reports for them.</p> <p>Rationale: This is a courtesy to persons being checked. The person whose name is being checked in the central registry must complete a portion of the request form, but neither the Code or the Virginia State Police form require notification of the individual for child care purposes.</p>
	60 G		<p>Part “G” allows a licensed child day center to obtain a national criminal background check, instead of the criminal history record check, for employees and volunteers. If a center chooses this alternative, this part provides that it must adhere to Virginia State Police requirements for obtaining fingerprints. In this care, a national criminal background check result of “qualified” from the Virginia State Police will suffice as a satisfactory result. If the result if “disqualified,” the center must obtain a satisfactory criminal</p>

			<p>history record check through the Central Criminal Record Exchange for the person if: 1) the center wishes to employ the person or approve the person as a volunteer or 1) the center wishes the department to issue a license. Rationale: The regulation acknowledges the Code provision allowing use of the national criminal background check for employees and volunteers. It explains the requirements for a satisfactory national criminal background check.</p>
	70	This is a new section.	Refer to comments for 22 15-51-60.
	70 A		<p>In addition to these comments, Part “A” allows a licensed child day center to keep copies of background checks records on site if the center is not the primary work place for a person. In this instance, the center must keep documentation of the place where the original sworn statement or affirmation and criminal history record report, and the original or a copy of the central registry finding, are kept, and copies are kept with a statement that the center designee has viewed the original sworn statement or affirmation and criminal history record report. Note that the Code does not require an original central registry check finding. Rationale: This provision gives access to background checks information by department representatives, while allowing centralized record-keeping at an individual’s primary work site.</p>
	70 B		<p>Part “B” specifies that licensed child day centers must keep all background check information for two years after a person required to provide background checks terminates his duties with a center. Rationale: There will be consistent interpretation of requirements for keeping background checks records between this regulation and the licensed child day center regulation.</p>
	70 C		<p>The provision in the current regulation, at 22 VAC 15-50-60.D, that the files are accessible only to the licensee, administrator, registered provider, board president, or their designee is changed. Part “C” stipulates that applicants and agents, and their designees, are the only center staff who may have access to these documents. The provision that the board president must have access to these documents is deleted. Rationale: The new terminology provides for applicants to maintain background checks records prior to being regulated. It identifies</p>

	70 D		<p>who has access to background checks documents.</p> <p>Part “D” explains that people who are denied a license because of background checks information must be given a copy of their background check information upon request. This part further provides that further dissemination of the background checks information is prohibited other than to the Commissioner’s representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. The note refers the reader to related provisions at 22 VAC 15-51-60 E. Rationale: The addition mirrors Code recodification language. It also is consistent with legal interpretation from the Office of the Attorney General.</p>
	80	This is a new section.	<p>The waiver of certain criminal convictions was added to the Code during the 1998 session of the General Assembly. The Code provides for the State Board of Social Services to promulgate regulations to implement the waiver. This section describes “waiver” and informs the reader of the location of the associated regulation. Rationale: The reader has an explanation of the term “waiver” and knows where to find the associated regulation.</p>

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There will be minimal impact on the authority and rights of parents in the education, nurturing, and supervision of their children. Parents can feel secure about the safety of their children while they are at work. There will be no impact on the marital commitment.