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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-705
VAC Chapter title(s)	Child Protective Services
Action title	Remove Notary Requirement for Consent to Central Registry System Check
Date this document prepared	June 15, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Department of Social Services (DSS) Office of Background Investigations (OBI) Central Virginia Child Abuse and Neglect Central Registry Unit (CRU) performs searches at the request of individuals who seek to provide services or care to children to determine if those individuals have a founded case of child abuse or neglect. The current regulation requires, in part, that an individual's consent for a search of the Central Registry System (CRS) be notarized. This regulatory action will remove the notary requirement in order to expedite the search process and make it less burdensome for individuals who wish to provide services or care to children through employment, foster care, adoption, or volunteer opportunities.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Board: State Board of Social Services
CRS: Central Registry System
CRU: Central Registry Unit
DSS: Department of Social Services
OBI: Office of Background Investigations

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

This rulemaking is an emergency situation because the current notary requirement for a CRS check delays the application process for individuals who wish to provide services or care for children. Child care is an essential service in allowing businesses to return to normal operations post-pandemic. With businesses re-opening and employment opportunities increasing, working parents need safe, reliable, and well-staffed child care for their children. With more than 6,000 licensed child care providers in the Commonwealth, there is a critical need to expedite the application and hiring processes so that child care workers can provide services and care as quickly as possible, thus allowing parents to work to ensure their families' financial stability and well-being.

In addition, children's residential facilities and foster care placements provide for the care and well-being of our most vulnerable children, and delays in CRS processing result in delays in staffing and placements for these children. This is particularly important now, since Virginia is experiencing a critical shortage of foster homes and other placements for children.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating agency is the State Board of Social Services. The Board has legal authority pursuant to Virginia Code § 63.2-217 to adopt regulations as necessary or desirable to carry out the purpose of Title 63.2. Under Virginia Code § 63.2-203, the Commissioner of DSS is charged with enforcing regulations adopted by the Board. Section 63.2-1501, et seq. provides the authority for the Child Protective Services program within Title 63.2. Virginia Code § 63.2-1515 provides that the Board prescribes regulations regarding the Central Registry.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The CRU is housed within OBI. The CRU processes requests for all children’s programs licensed in Virginia, as well as out of state and international requests for applicants who may have previously lived in Virginia. Virginia Code § 63.2-1515 mandates that searches be completed within ten business days of receiving the request.

The CRS within the CRU contains names of individuals identified as abusers or neglectors in founded child abuse and neglect investigations conducted in Virginia. Findings are made by Child Protective Services staff in local departments of social services and are maintained by DSS. The request volume of search requests varies from 750 per day to 1,600 per day during peak season, which runs late April through September.

Virginia is one of just 13 states that requires notarization of an applicant’s consent to a Central Registry search. Child care providers mail the applicant’s notarized authorization for the Central Registry request, along with payment, to the CRU to conduct the search. The notary requirement slows down this process and places a burden on applicants, who must print the application form, locate and travel to a notary, and then give the notarized form to the child care provider.

The high volume of daily requests, manual processing, and staffing requirements can cause delays that affect the ability of the CRU to meet the mandatory timeframe of ten days to process requests. In an effort to resolve these issues and expedite this process, DSS is currently implementing the new Virginia Enterprise Licensing Application (VELA) public-facing portal, which will eliminate the need for the manual submission of documents, manual data entry, and mailing of forms and payments. The requirement that an applicant’s consent to a Central Registry search be notarized remains a regulatory requirement that will be an impediment to facilitating and expediting this process in order to better serve the citizens of the Commonwealth and meet the mandatory timeframe of ten days to process requests.

Making the application process less onerous will allow qualified individuals to be approved more quickly, so that they can begin working or volunteering with children sooner, allow child care providers to hire staff more quickly, and allow volunteer organizations to bring on volunteers more quickly. This is particularly important in light of current shortages of affordable, accessible child care as well as staffing shortages in the Commonwealth. Ensuring that families have access to child care and that facilities are well-staffed is essential to families’ financial well-being and the health, safety, and welfare of children in care. In addition, Virginia is currently experiencing a critical shortage of foster homes. Making the CRS process faster and easier will alleviate delays in staffing and placements for children’s residential facilities and foster care placements.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The proposed regulatory action will amend the existing Child Protective Services regulation provisions regarding a notarized consent to search. The substantive changes include:

- In 22VAC40-705-160(A)(3), changing “the individual’s notarized consent” to “the individual’s signed consent.”

- In 22VAC40-705-170(A), changing “notarized signature” to “signature.”

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of this regulatory action would be the ability to facilitate and expedite the hiring of staff who provide services or care to children. During the COVID-19 pandemic, many child care facilities closed and others struggled to maintain the required staffing levels to provide adequate care. As facilities have started to re-open and more people are back at work, hiring staff has continued to be challenging as the demand for child care has increased. Eliminating the notary requirement in this regulation would remove an inconvenient, burdensome, and time-consuming element of the application process for individuals who wish to provide care or services to children and would allow providers to get staff into place more quickly. Others who wish to provide services or care to children, such as volunteers, foster parents, and those who work in child placing agencies, would benefit similarly from not having to meet this requirement. Advantages to the agency include the improvement of customer service to child care providers and staff and others who provide services and care to children by offering them an easier and less cumbersome process. This process would also be more efficient for agency staff who process applications. There are no disadvantages to the public or the Commonwealth.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no viable alternatives to achieve the purpose of this regulatory change.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

INSERT:

The Board of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Kristen W. Eckstein, Virginia Department of Social Services, Office of Background Investigations, 801 East Main Street, Richmond, Virginia 23219; phone: 804-726-7099; email: Kristen.eckstein@dss.virginia.gov; fax: 804-726-7897. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
160	N/A	Subsection (A)(3) requires an individual's notarized consent for a search of the Central Registry.	The section is being changed to remove the requirement that the consent be notarized and, instead, require that the consent be signed.

			The intent is to expedite the search process and make it less burdensome for people to provide services and care to children.
170	N/A	Subsection (A) requires a notarized signature authorizing release of information pursuant to a Central Registry search.	As with the change in section 160, the section is being changed to remove the requirement that the consent be notarized and, instead, require that the consent be signed. The intent is to expedite the search process and make it less burdensome for people to provide services and care to children.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements