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Periodic Review Report of Findings

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-90
Regulation title	Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers
Date this document prepared	April 15, 2020

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

ALF means assisted living facility.

ADCC means adult day care center.

DBHDS means Department of Behavioral Health and Developmental Services.

NCJI means Non-criminal Justice Interface

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The State Board of Social Services is the promulgating entity for the regulation. The following sections of the Code of Virginia are the sources of legal authority for the regulatory change: § 63.2-217 states that State Board shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2; § 63.2-1720 includes requirements for background checks for assisted living facilities and adult day care centers; § 63.2-1732 addresses the State Board’s authority to adopt regulations for assisted living facilities that protect the health, safety and welfare of residents; § 63.2-1733 addresses the State Board’s authority to adopt regulations for adult day care centers that protect the health, safety and welfare of participants of adult day care centers.

Alternatives

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

There is no viable alternative for achieving the purpose of the regulation, which is promulgated to protect the health, safety and welfare of assisted living facility residents and adult day care center participants.

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. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed to assist in the periodic review.

Committer	Comment	Agency response
Carrie Dowdy, Director of Health Services, Administrator for Senior Living, Dogwood Village of Orange County Senior Living Email to Agency	The current regulation for background checks should be retained in its current form.	The regulation needs to be updated based on the Code of Virginia and consideration is being given to changes for technical and clarification purposes.
Rinda Theibert Town Hall	Crime checks Background checks need to be completed. Is there a way to use a faster service? I recently was interviewed for a DBHDS licensed job and had to pay a fee like \$80 to get my fingers digitally copied with thorough background checks returning in days. Even though the	A name search through the Non-criminal Justice Interface (NCJI) system of the State Police allows for a quick turnaround on background checks. Fingerprint based background checks are only required if there is a state law authorizing this. There is no state law in Virginia authorizing fingerprint based

	<p>cost is high this might be a better option. Please thoroughly check the background of nursing home workers.</p>	<p>background checks for assisted living facilities and adult day care facilities.</p> <p>Nursing homes are regulated by the Virginia Department of Health.</p>
<p>Tommy Comer, Chief HR Officer, Commonwealth Senior Living Town Hall</p>	<p>Antiquated and Limited System I have yet to find anyone associated with the work we do – taking care of a frail population-who does not believe we should have detailed/comprehensive background checks completed on individuals we hire. In fact, we do multiple reference checks and a pre-employment drug test (though not a regulation). The challenges we face with using the State Police background system are:</p> <ol style="list-style-type: none"> 1. The system does not generate a digital response unless the individual has nary a traffic ticket. If the individual has any record at all, even situations that would not affect employment in an ALF, the report is mailed to the community/facility and often takes 30+ days. This is not only challenging for the community/facility but also the individual who must wait to confirm he/she can start work. Most commercial options in existence offer faster turnaround times (48-72 hours). 2. We often hire individuals who have lived in other states and the State Police background check is not helpful in examining a candidate’s full record in other states. Other commercial options will pull records nationally in one place. If we hire someone who has lived elsewhere, we end up completing two background checks to ensure we know the person’s background. <p>Consideration should be made to amend the regulation to allow ALFs options as to what background check service they use as part of their pre-employment process.</p>	<p>The Code of Virginia, § 63.2-1720, requires that an assisted living facility obtain the background check from the Central Criminal Records Exchange, which is a division within the Virginia Department of State Police.</p>

<p>Tanya Woodard, Chestnut Grove ALF Town Hall</p>	<p>Background Checks for Assisted Living Facilities Although I agree that background checks should be done on employees of assisted living facilities, having to have them notarized and having to wait sometimes over a month for these to be returned is a little much. There are times when we send these into the state police that it takes over thirty days to get them back. We have called before when this has happened, tried to explain to the person on the phone that we only have thirty days to get these back or we will receive a citation the reply that we have gotten more often than not is "we have 45 days to process this, so that is not our problem." Another issue that we have is that we are waiting for the background checks to be returned we are to pay two people to do one person job because the new hire has to be within sight of a coworker at all times. We should be able to submit this background check online and be able to get the results electronically instead of having to wait for the original to be returned to the facility.</p>	<p>Assisted Living Facilities can use the SP-230, which is a State Police criminal history records check form that does not require notarization. The State Police has the Non-Criminal Justice Interface (NCJI) system, which allows for the searching of Virginia criminal records via the Internet. The system can be used by non-criminal justice entities authorized by statute and private sector employees that sign an agreement with the Department of State Police. Assisted living facilities are included in the entities that can use the NCJI to ensure suitability for employment. A name search produces electronic responses within 72 hours, or less.</p>
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Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set out in Executive Order 14 (as amended July 16, 2018) in that it facilitates the efficient and effective operation of state government by establishing minimum requirements for background checks for ALF and ADCC staff, and enabling residents, participants, relatives and legal representatives, licensing inspectors, and other citizens of the Commonwealth to be knowledgeable of these requirements. The regulation, which is clearly written and easily understandable, is necessary to interpret the law and protect the health, safety and welfare of ALF residents and ADCC participants.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The State Board of Social Services recommends that the regulation be amended to update it for technical and clarification purposes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

The regulation is needed to protect the health, safety and welfare of ALF residents and ADCC participants. The comments received from the public during the periodic review do not indicate that substantive changes are in order. The regulation is not particularly complex, but is necessary to interpret state law. The regulation was last amended in 2017 to reflect revisions to the Code of Virginia. The regulation needs revision to update it based on changes to the Code of Virginia and for technical and clarification purposes. The amendments should have no economic impact on small businesses.