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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-192
Regulation title(s)	<i>Background Checks for Child Welfare Agencies</i>
Action title	Repeal and replace the Background Check regulation
Date this document prepared	Rev 10-7-19

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*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) 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. If applicable, generally describe the existing regulation.

The *Background Checks for Child Welfare Agencies* regulation, 22VAC40-191, sets forth standards that are intended to protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment. This regulatory action will repeal the existing *Background Checks for Child Welfare Agencies* regulation, 22VAC40-191, and replace it with a new regulation, 22VAC40-192.

The regulation is being revised to incorporate technical corrections and language necessary to ensure consistency with the Code of Virginia and federal legislation and to make any other changes the agency deems necessary after comments and review. Several new sections will be added to provide program specific information. The federal Child Care and Development Block Grant Act added requirements for fingerprint based background checks and checks of out of state child abuse and neglect registries for individuals who have lived in another state in the past five years. There are multiple changes needed to correct this regulation including adding new requirements for fingerprint based background checks and

out of state child abuse and neglect registry background checks, as well as correcting Code citations that are no longer accurate. The regulation references the location of the list of barrier crimes used to screen individuals required to have a criminal record check. The list is now located in a new section of the Code of Virginia and includes additional crimes. Repeal of the existing regulation and adoption of a new regulation will allow greater flexibility to adjust the structure, format, and language of the current regulation while incorporating state and federal requirements for background checks.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

CCRE – Central Criminal Records Exchange
OBI – Office of Background Investigations

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Child Care Development and Block Grant Act of 2014 (42 U.S.Code Subchapter II-B) include health and safety requirements for child care programs. Changes in this regulation are proposed in order to align requirements for child day programs with these federal requirements. No requirements in this regulation exceed federal requirements. Child Care and Development Block Grant requirements can be found in the U.S. Code at <https://www.law.cornell.edu/uscode/text/42/chapter105/subchapter-II%E2%80%93B> and in the Code of Federal Regulations at <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=11d1dedba284f82bd70d5149d7fcc28c&ty=HTML&h=L&mc=true&r=PART&n=pt45.1.98>. Sections 19.2-392.02, 63.2-1720.1, 63.2-1721.1, 63.2-1722, 63.2-1724, and 63.2-1725 of the Code of Virginia have been updated to include background check requirements for child day programs. Legislative changes include updates to barrier crimes, implementation of fingerprint based national background checks, and requirement of out of state child abuse and neglect searches. The *Background Checks for Child Welfare Agencies* regulation is due for a periodic review and this action will include that review.

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 has authority to adopt regulations as may be necessary to carry out the mandated purposes of the Department of Social Services. Sections 63.2-217 and 63.2-1734 of the

Code of Virginia provide the legal authority for the State Board of Social Services to adopt regulations for child welfare agencies.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The proposed action will repeal and replace the regulation to provide clarification on background check requirements and ensure compliance with federal and state laws. The regulation helps to protect the health, safety, and welfare of children in out of home care by ensuring that persons required to have background checks have not been convicted of a barrier crime which prohibits licensure, registration, approval, or employment. The Child Care Development Block Grant Act added requirements for fingerprint based background checks and checks of out of state child abuse and neglect registries for individuals who have lived in another state in the past five years. The regulation references the location of the list of barrier crimes used to screen individuals required to have a criminal record check. The list is now located in a new section of the Code of Virginia and includes additional crimes. The regulation is being revised to ensure the requirements are easier to understand.

Substance

Please 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.

This regulatory action will repeal the existing regulation and replace it with a comprehensive document that will incorporate technical corrections and language necessary to ensure consistency with the Code of Virginia and federal legislation. Several new sections will be added to provide program specific information. The changes ensure clarification about background check requirements and bring the regulation into compliance with the Code. New substantive provisions include:

- requirements for child day program to submit fingerprint based background checks
- requirements for child day program to request an search of another state's child abuse and neglect registries for individuals who have lived in another state in the past five years
- updated timing of background checks, including repeat checks
- requirements for contract employees
- updated requirements for a waiver of criminal conviction
- including unlicensed subsidy vendors as a program type covered by the regulation

Issues

Please 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.

This regulatory action poses no disadvantages to the public or to the Commonwealth. This action will help ensure the safety and well-being of children in child day care and foster care environments. The

Background Checks for Child Welfare Agencies regulation sets forth standards that are intended to protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment. This regulatory action will repeal the existing regulation and replace it with a comprehensive document that will incorporate technical corrections and language necessary to ensure consistency with the Code of Virginia and federal legislation and to provide clarity and ease of understanding of program specific requirements.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements in this regulatory action that are more restrictive than the applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agency will be particularly affected by this action.

Localities Particularly Affected

This action will not affect a particular locality in a disproportionate manner.

Other Entities Particularly Affected

The regulation will affect child welfare agencies including: licensed family day homes; licensed family day systems; family day homes approved by family day systems; licensed child placing agencies; foster and adoptive homes approved by child placing agencies; voluntarily registered family day homes; licensed child day centers; religiously exempt child day centers; and child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state, or local child care funds.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic

impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There is no additional cost or savings for the agency to implement and enforce this regulation. The monitoring of adherence to the regulation is currently a responsibility of VDSS staff. The VDSS Office of Background Investigations collects a fee for processing background checks; however, this is not new and will not change because of this action.</p> <p>There was a significant, one time cost to the agency to implement fingerprint based background checks for child day providers. The cost was incurred when the agency's background information system was upgraded and new staff were hired to handle the volume of requests for child care background screenings conducted through the Office of Background Investigations. There were approximately 86,000 fingerprint based background checks conducted in 2018 for child day program providers.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no additional costs or savings for other state agencies. The Virginia State Police incur cost related to processing fingerprint checks, which increased in volume because of the legislative changes.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This action will bring the regulation into compliance with the Code of Virginia and federal requirements and help ensure the safety and well-being of children in child day care and foster care environments.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>This action will not affect localities. There are no projected costs, saving, fees or revenues required of localities because of this action. Localities that operate child day programs already have been required to comply with the additional background check requirements described in this regulation.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This action will bring the regulation into compliance with the Code of Virginia and federal requirements and help ensure the safety and well-being of children in child day care and foster care environments.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the</p>	<p>The regulation will affect child welfare agencies including: licensed family day homes; licensed</p>
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<p>regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>family day systems; family day homes approved by family day systems; licensed child placing agencies; foster and adoptive homes approved by child placing agencies; voluntarily registered family day homes; licensed child day centers; religiously exempt child day centers; and child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state, or local child care funds.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>It is estimated approximately 6,000 licensed family day homes; licensed family day systems; family day homes approved by family day systems; licensed child placing agencies; foster and adoptive homes approved by child placing agencies; voluntarily registered family day homes; licensed child day centers; religiously exempt child day centers; and child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state, or local child care funds will be affected. All of the providers are small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>Fees associated with this regulation include the national fingerprint based criminal records search, the criminal history record search, the search of the Virginia child abuse and neglect registry, and the search of another state's child abuse and neglect registry.</p> <p>The fee for a fingerprint based criminal records search is \$59 for employees and \$39 for volunteers. The fee for a criminal history records search is \$27. The fee for a search of Virginia's child abuse and neglect registry is \$10. The fee for a search of another state's child abuse and neglect registry varies from state to state. The search of another state's registry is only required for individuals who have lived in another state in the past five years. VDSS is covering the cost of the fingerprint based criminal records search for child day care providers through September 30, 2019.</p> <p>There are no costs related to the development of real estate. There is no purchase of equipment required.</p> <p>Providers are already paying the fees associated with background checks.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This action will bring the regulation into compliance with the Code of Virginia and federal requirements and help ensure the safety and well-being of children in child day care and foster care environments.</p>

Alternatives

Please 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 other alternatives to the proposed regulatory action, as the action is necessary to make the regulation consistent and in compliance with state and federal law.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternative methods that would accomplish the objectives of this regulatory action. This action is needed to be in compliance with state and federal laws.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, 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.

The *Background Checks for Child Welfare Agencies* regulation was last updated in 2014 and is due for a periodic review. This regulation is necessary for the protection of the health, safety, and welfare of children who are in out of home care. The regulation sets forth standards that are intended to protect the health, safety, and welfare of children receiving services by ensuring that persons required to have

background checks have not been convicted of a barrier crime which prohibits licensure, registration, approval, or employment. There have not been many complaints about the current regulation from the public. Comments, both positive and negative, have been received about the federal requirement for individuals at child day programs to submit fingerprint based background checks. The positive comments support ensuring the safety of children by requiring a national criminal history search. The negative comments concern the requirement to submit background checks when an agency does not accept any federal money. The regulation does not overlap or conflict with federal or state laws. The current action will bring the regulation into compliance with recent state and federal Code changes and simplify language making the regulation easier to understand.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, 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. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Rokeya Mustafa	Combine the CPS and fingerprint check into one action so directors do not have to track different expiration dates. It will make the process much easier.	This recommendation is currently being considered. It will require significant information system changes.
Nakiah Reiter	It is unfair and unreasonable that any employee should be terminated from a childcare position because of a policy change originating from outside that employee's center, rather than because of any prohibitive action on that employee's part, or because of a policy change originating from within the center, itself.	Federal and state laws describe the requirements regarding background checks for individual who work with children. Background checks are in the best interest of families and providers because they are a first step to keeping children safe. This regulation does not require termination of an employee due to a policy change. Individuals with a barrier crime conviction are prohibited, and have been prohibited, from working with children.
Rita Strijker, Gail Dickert	Consider having the FBI background checks carryover to a new employer instead of requesting a background check every time an employee switches jobs. Consider establishing a process through which a prospective employer can access a fingerprinting check run from another center since the content is managed by the same system that approves their eligibility.	The state law requires background checks be completed upon hire for each employer.
Ellett Snead	Background checks are an expensive endeavor with the number of employees most child care facilities have. Initial	VDSS covered the cost of the child care fingerprint based background checks for two years. Background checks help ensure safety for the children who are in out of home

	fingerprinting costs were waived but taxpayers had to foot the bill.	care by screening criminal records for barrier crimes convictions.
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Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the State Board of Social Services is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose 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>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Deborah Eves, 801 E. Main Street, 9th Floor, Richmond VA 23219, 804-726-7506, deborah.eves@dss.virginia.gov. 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 this stage of this regulatory action.

Detail of Changes

Please 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.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
10	10	Section 10 "Defining Words and Phrases"	"Definitions" Definitions have been updated to include correct Code citations and other technical corrections, include new definitions, remove outdated and

			<p>definitions not used in the regulation, and remove unnecessary language.</p> <p>New and revised definitions provide clarity about background check terms, and align with Code requirements.</p> <p>Definitions that changed: “Agent” – revised to mirror what is in § 63.2-1701.</p> <p>“Applicant” – revised to mirror what is in § 63.2-1701.</p> <p>“Approved” – removed the term resource parent.</p> <p>“Background check” – added fingerprint based national background check and the search of the child abuse and neglect registry for any state where a person has resided in the past five years. Federal Authority: Sec. 98.43; State authority: § 63.2-1720.1 and § 63.2-1721.1.</p> <p>“Barrier Crime” – revised to mirror definition in § 19.2-392.02.</p> <p>“Child-placing agency” – revised to mirror definition in § 63.2-100.</p> <p>“Child welfare agency” – added religiously exempt child day centers and voluntarily registered family day homes as they are included in the definition in § 63.2-100.</p> <p>“Commissioner” – clarifies that the Department of Social Services is the Virginia Department of Social Services.</p> <p>“Criminal history record check” – clarifies that the Virginia State Police are responsible for the name based criminal history record report. It also clarifies that the name based search follows a different process than a national fingerprint based check.</p> <p>“Criminal history record report” – clarifies that a criminal history record report can come from Virginia State Police or the Federal Bureau of Investigation (FBI). The Virginia State Police name based search contains a Virginia record and the</p>
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		<p>national fingerprint check contains a FBI and Virginia record.</p> <p>“Department” – clarifies that the Department is the Virginia Department of Social Services, to mirror definition in § 63.2-100.</p> <p>“Department representative” – removes language that is not part of the definition. Information removed is in 22VAC40-120 <i>Minimum Standards for Licensed Family Day-Care Systems</i> and 22VAC40-131 <i>Standards for Licensed Child-Placing Agencies</i>.</p> <p>“Disqualifying background” - Revised to focus on barrier crime convictions and a founded complaint of abuse or neglect. The reference to "any other felony within 5 years" is now included in the list of barrier crimes in § 19.2-392.02 and no longer needs to be added to the definition. Purged records from child protective services cannot substantiate a “founded” determination. Details about when a person is considered the subject of a founded abuse complaint are not needed in this definition. That information is now found in section 40 E of the revised regulation.</p> <p>“Facility” – unlicensed child day programs receiving child care subsidy assistance were added because they are now inspected annually by licensing staff.</p> <p>“Family day home” – language has been removed that is not needed in a basic definition. The information removed from the definition is found in 22VAC40-111 <i>Standards for Licensed Family Day Homes</i>.</p> <p>“Independent foster home” – revised to mirror the definition in § 63.2-100.</p> <p>“Involved in the day to day operations” – removed language about being employed by a licensed family day system as a home visitor because licensed family day systems no longer use the term home visitor.</p> <p>“Licensed” – revised definition, removed repetitive language.</p>
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			<p>“National criminal background check” - the phrase “obtained through submission of fingerprints” has been added to clarify how the national criminal background check is obtained.</p> <p>“Person who operates or maintains a child welfare agency” – added to ensure consistency with 22VAC40-80 <i>General Procedures and Information for Licensure</i>.</p> <p>"Religious exempt center" - revised to more closely match the description of a child day center operated by a religious institution exempt from licensure detailed in § 63.2-1716.</p> <p>“Search of central registry” – revised for accuracy. The search determines if an individual has a finding of abuse or neglect. The search is not conducted by the Child Protective Services unit.</p> <p>“Subsidy vendor” – added. Subsidy vendors were not previously covered by this regulation. Definition is consistent with subsidy regulation, <i>Child Care Program 22VAC40-665</i>.</p> <p>“Sworn statement” – revised. The language removed does not describe or define sworn statement. The model sworn statement or affirmation form includes the information that has been removed.</p> <p>“Volunteer” – revised to more clearly describe what constitutes volunteer activities. Volunteers are not just individuals who are alone with children.</p> <p>Definitions removed:</p> <p>“Contract agency” – term described in section 150 of the revised regulation “Requirements for independent contract employees and employees hired by a contract agency in a child day program”.</p> <p>“Contract employee” – term described in section 150 of the revised regulation “Requirements for independent contract employees and employees hired by a contract agency in a child day program.”</p>
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			<p>“Good character and reputation” – definition removed because it is not used in the regulation.</p> <p>“Local agency” – removed because it is not used in this regulation.</p> <p>“May” – removed. As a common term, is it not necessary to define.</p> <p>“Must” – removed. As a common term, it is not necessary to define.</p> <p>“Must not” – removed. As a common term, it is not necessary to define.</p> <p>“Offense” – removed. The list of barrier crimes was consolidated in § 19.2-392.02 as of 7/1/17. This definition is no longer in Code.</p> <p>“Other felony” – removed. This definition is no longer needed. The list of barrier crimes was consolidated in § 19.2-392.02 as of 7/1/17. The definition of barrier crime now includes any other felony conviction within five years as a barrier.</p> <p>“Parent volunteer” – removed. This term is not used in the regulation.</p> <p>“22VAC” – removed. It is not necessary to define VAC number in this regulation.</p> <p>“Visit” – removed. This term is not used in the regulation.</p>
<p>30 40</p>	<p>20</p>	<p>Section 30 “Identifying the Facilities That Are Not Covered By This Regulation” This section contains a list of provider types that are not covered by the regulation.</p> <p>Section 40 “Identifying Who is Covered By This Regulation” This section includes a list of provider types covered by the regulation; what is included at initial application; the timing for background checks needed after initial application; requirements for:</p>	<p>“Identifying Who is Covered By This Regulation”</p> <p>This section describes the provider types that must follow this regulation and the provider types that are not covered by the regulation.</p> <p>Because this section now covers only those covered by the regulation, other requirements from the current section 40 have been moved to different sections of the revised regulation.</p> <p>The current section 40 also includes requirements for background checks at initial application, timing of background</p>

		<p>contract employees, adult household members, household members ages 14-18; and how long background checks remain acceptable.</p>	<p>checks after initial application, requirements for contract employees, adult household members, household members ages 14-18, and how long background checks are acceptable.</p> <p>Information about waivers is now in section 160. Information about contract employees is now in section 150. The information covered in the tables is now in sections 80-140. Information about the timing of background checks including how long they remain acceptable is now in section 60.</p> <p>Unlicensed subsidy vendors were added to the list of providers covered by this regulation. Unlicensed subsidy vendors are required in the Code to submit background checks. Adding background check requirements for this provider type will provide clarification.</p> <p>Revisions were made in describing which programs are not covered by the regulation. Certified preschools and children’s residential facilities are still not covered by the regulation. New child care exemption requirements described in § 63.2-1715 of the Code became effective 7/1/19, and language in section 22VAC40-192-20 B describes these programs.</p> <p>The requirement for children aged 14 to 17, who reside in a family day home or a foster or adoptive home, to complete a search of the Virginia central registry was removed. This requirement is not specified in the state or federal Code.</p> <p>The impact of these changes will be increased protection of children in care. The reorganization of this section should provide clarity by separating requirements into individual sections.</p>
20	30	<p>Section 20 “Describing Background Checks.” This section describes what comprises a background check and defines each part.</p>	<p>“Describing Background Checks”</p> <p>The section describes the components of a background check and clarifies the requirements by program type. Virginia Code provisions are described in 22VAC40-192-30 A to show Code authority to require background checks and who is required to submit background checks.</p>

			<p>New requirements include:</p> <ul style="list-style-type: none"> • fingerprint based national criminal background check • out of state child abuse and neglect search requirements for child day programs. • Employees and volunteers in child day programs shall not work until the criminal background check results and Virginia central registry results are received. <p>Adding these new requirements align the regulation with federal requirements in the Child Care and Development Block Grant and the Code of Virginia. The impact of these changes will be increased protection of children in care. The federal authority is in Sec. 98.43 (b). Sections 63.2-1720.1 and 63.2-1721.1 B 3 of the Code of Virginia contain these requirements.</p> <p>Changes were made to the language from the current section 20, which describes criminal history record checks and national fingerprint based background checks. These changes clarify that the criminal history record check is different than a national fingerprint based background check. 22VAC40-192-30 D describes that employees of Licensed Child Placing Agencies and independent foster homes need the name based search. Language was added to clarify that a criminal history report includes criminal charges and convictions.</p> <p>Language has been added to clarify that individuals required to submit national fingerprint based background checks must follow the process of the department's Office of Background Investigations and individuals required to submit criminal history record check are required to use the forms and process of the Virginia State Police.</p>
50	40	Section 50 "Explaining Requirements For Satisfactory Background Checks" This section describes what satisfactory completion looks like for	<p>"Explaining Requirements for Satisfactory Background Checks"</p> <p>This section describes what satisfactory completion looks like for each component of the background check, including the</p>

		<p>each part of the background check. This section also includes exceptions to barrier crimes convictions.</p>	<p>new requirement to request a search of another state’s child abuse and neglect registry for childcare individuals who have lived in another state in the previous five years. This requirement was added when the background check requirements were updated in Code in 2017. Information about the timing of background checks was moved to section 60.</p> <p>Language about the sworn statement or affirmation was revised. Language about criminal convictions including prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult and equivalent convictions from another state was removed. This language remains in Code (§ 63.2-1719) and on the sworn statement form, but is not needed in this regulation.</p> <p>The requirements have been organized into results of a name based search and the results of a national fingerprint background check. The name based search language remains the same. The provider will still receive the state police results. The fingerprint based search yields a letter from OBI that indicates if the person is eligible to work with children. If OBI cannot make an eligibility determination, OBI will send a letter explaining this.</p> <p>Language regarding the central registry search was updated to reflect the current OBI process.</p> <p>The requirement to review an original criminal history record report of a contract employee or contract agency was removed. Requirements for contract employees in a child day program are in section 150.</p> <p>This section no longer includes the exceptions to barrier crimes convictions. Those exceptions remain in the Code of Virginia and have not been eliminated. Those exceptions are in the Code of Virginia in sections 63.2-1721 and 63.2-901.1. They also appear on the list of barrier crimes that is posted to each</p>
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			<p>program's page on the department's website.</p> <p>Background check requirements for individuals turning 18 years were moved to sections 80, 90, 100, 110, 130, 140 of the proposed regulation. The intent is to have all background check requirements including timing under each program section where it will be easier to locate.</p> <p>The requirement for voluntarily registered applicants to submit new background checks as part of the renewal application was removed. Background checks for voluntary registered family day homes are now valid for 5 years. Section 110 contains voluntary registration requirements and section 60 covers timing requirements.</p> <p>The allowance for an individual to take a background check/central registry check with them if it is less than 91 days old and remain valid for 12 months has been removed. This is no longer permitted due to changes in Code (§§ 63.2-1720.1 and 63.2-1721.1).</p> <p>Information about waivers is in section 160 of the proposed regulation.</p> <p>New requirements align the regulation with federal requirements in the Child Care and Development Block Grant and the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
60	50	<p>Section 60 "Explaining Consequences of Unsatisfactory Background Checks Results" This section describes what happens if there is a missing or disqualifying background check including denial of licensure or revocation of licensure.</p>	<p>"Missing or Disqualifying Background Check Results"</p> <p>This section describes what happens if there is a missing or disqualifying background check including denial of licensure or revocation of licensure.</p> <p>Changes were made to the list of the types of providers who could have a disqualifying background check that would affect denied licensure, registration, or approval. Subsidy vendors were added to this list as they are now covered by this regulation. Children age 14 and older who live in a family day home, foster home, or adoptive home and have an</p>

			<p>unsatisfactory central registry finding are no longer included as individuals who could have disqualifying background checks, as the proposed regulation no longer requires a search of the central registry for children household members aged 14 or older. Language is added to clarify that if a youth participating in the Fostering Futures has a disqualifying background, the foster home's approval should not be denied, pursuant to § 63.2-901.1 G of the Code.</p> <p>The requirement to submit a sworn statement or affirmation was added to sections 80-140, where each program type's background checks are described.</p> <p>This section no longer allows 30 days for individuals who work or volunteer in child day programs to receive the results of the search of the Virginia central registry. To comply with federal requirements, results must be received prior to an individual working. This requirement is in §§ 63.2-1720.1 and 63.2-1721.1 of the Code. Employees and volunteers in licensed child placing agencies and licensed independent foster homes still have 30 days to receive these results in the proposed regulation.</p> <p>This section includes the new requirements for the search of another state's child abuse and neglect registry for childcare individuals who have lived in another state in the previous five years. This requirement is in §§ 63.2-1720.1 and 63.2-1721.1 of the Code.</p> <p>The requirement for children aged 14 to 17, who reside in a family day home or a foster or adoptive home, to complete a search of the Virginia central registry was removed. This requirement is not specified in the state or federal Code.</p> <p>Language requiring facilities to inform individuals that they are requesting central registry checks and criminal history checks was removed. This language is not needed, as individuals must sign forms granting permission to request a central registry search or criminal history check. Individuals grant</p>
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			<p>permission for these background checks as part of the process.</p> <p>Language in the proposed clarifies that the facility, department, or registering or approving authority may require a new background check if there is a reason to believe there is a disqualifying background for an individual.</p> <p>The requirement for childcare individuals to report barrier crime convictions or findings of child abuse and neglect to their employer was added. Facilities are required to inform individuals they must report barrier crime convictions or findings of child abuse and neglect. Notification is required in the Code of Virginia § 63.2-1720.1 I.</p> <p>New requirements align the regulation with federal requirements in the Child Care and Development Block Grant and the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
40	60	<p>Section 40 “Identifying Who is Covered By This Regulation” This section includes the timing for background checks needed after initial application.</p>	<p>“Timing of Background Checks”</p> <p>This section describes the requirements for repeating background checks for each program type. New requirements include a five- year repeat check requirement for child day programs and clarification that background checks are required for each employer.</p> <p>Prior to 7/1/17, providers who were exempt pursuant to § 63.2-1716 (religiously exempt) did not have to repeat background checks. Now, § 63.2-1720.1 of the Code requires a five year repeat for all child day care providers.</p> <p>Licensed child placing agencies, independent foster home providers, and foster/adoptive parents still have a three year repeat check requirement.</p> <p>The allowance for an individual to take a background check and central registry check with them if it is less than 91 days old and remain valid for 12 months has been removed. Individuals can no longer carry background check results from one employer to another employer for 90 days. In Section 60 C of the proposed,</p>

			<p>new background checks are required for each new job or volunteer opportunity. Background checks are required for each employer. If an individual goes on a leave of absence, but is not terminated or separated from their position, the background check is good for 5 years. If an individual transfers to another branch of the same entity, there is no need for a new background check because it is not a new employer.</p> <p>New requirements align the regulation with federal requirements in the Child Care and Development Block Grant and the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
70	70	<p>Section 70 “Keeping Background Check Records” This section describes how and where facilities must store background check records, describes who can have access to records, and prohibits dissemination of background check information.</p>	<p>“Access to Background Check Information”</p> <p>This section describes how background check records must be stored, who can have access to the records, and prohibits dissemination of background check information.</p> <p>The requirement to keep copies of background check records at multiple locations was removed. An allowance to store background checks in secure electronic files has been added. Removing the requirement to keep copies at a facility if a facility is not a primary work place for an individual helps protect individuals by not keeping multiple copies of information.</p> <p>Language for voluntarily registered family day homes was updated to reflect current requirements. The language now describes the OBI letters, the out of state child abuse and neglect search requests, and the requirement for the homes to keep the information, not the contracting agencies. Contracting organizations will now only be required to keep copies of the background check documentation. The requirement for a child 14 or older to have a search of the central registry has been removed. All facilities (including voluntarily registered family day homes) now will be required to keep background checks for two years.</p>

			<p>Language for family day systems' requirements to keep background checks was updated to reflect current requirements. There is no longer a requirement for the approved homes to keep background check documentation in addition to the family day system keeping such documentation.</p> <p>A requirement was added that the facility must inform every individual required to undergo a background check that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final eligibility determination is made. This was added to comply with federal law which requires an appeal process in Sec. 98.43 (e)(1) and with Virginia law, §§ 63.2-1720, 63.2-1721, 63.2-1720.1, 63.2-1721.1.</p> <p>These requirements reduce the administrative burden of facilities by not requiring copies of background checks at branch sites. The impact of these changes will be reduced risk of confidential information being shared.</p>
	80		<p>"Requirements for Licensed Family Day Homes"</p> <p>This is a new section that details requirements specific to licensed family day homes including:</p> <ul style="list-style-type: none"> • Who is required to submit background checks at initial application for licensure • Who is required to submit background checks after initial licensure • What is included in a background check • Timing for background checks after initial application • Repeat requirement <p>Listing background check requirements by program type allows individuals to quickly find the information needed to comply with federal and state requirements. Background checks for child day providers helps protect the health, safety, and welfare of children</p>

			receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment.
	90		<p>“Requirements for Licensed Family Day Systems and Family Day Homes Approved By Family Day Systems”</p> <p>This new section details requirements specific to licensed family systems and family day homes approved by the family day system including:</p> <ul style="list-style-type: none"> • Who is required to submit background checks at initial application for licensure • Who is required to submit background checks after initial licensure • What is included in a background check • Timing for background checks after initial application • Repeat requirement <p>Listing background check requirements by program type allows individuals to quickly find the information needed to comply with federal and state requirements. Background checks for child day providers helps protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment.</p>
	100		<p>“Requirements for Licensed Child Placing Agencies, Licensed Independent Foster Homes, and Foster and Adoptive Homes Approved By Child Placing Agencies”</p> <p>This section details requirements specific to licensed child placing agencies and licensed independent foster homes as well as potential foster and adoptive parents, foster and adoptive parents and adult household members including:</p> <ul style="list-style-type: none"> • Who is required to submit background checks at initial application for licensure • Who is required to submit background checks after initial licensure

			<ul style="list-style-type: none"> • What is included in a background check • Timing for background checks after initial application • Repeat requirements <p>Listing background check requirements by program type allows individuals to quickly find the information needed to comply with federal and state requirements. Background checks for licensed child placing agencies and foster and adoptive parents helps protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense.</p>
	110		<p>“Requirements for Voluntarily Registered Family Day Homes”</p> <p>This new section details requirements specific to voluntary registered family day homes:</p> <ul style="list-style-type: none"> • Who is required to submit background checks at initial application for registration • Who is required to submit background checks after initial registration • What is included in a background check • Timing for background checks after initial application • Repeat requirement <p>Listing background check requirements by program type allows individuals to quickly find the information needed to comply with federal and state requirements. Background checks for child day providers helps protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment.</p>
	120		<p>“Requirements for Religious Exempt Child Day Centers”</p> <p>This new section details requirements specific to religious exempt child day centers:</p>

			<ul style="list-style-type: none"> • Who is required to submit background checks at the time of initial submission of the statement of intent for religious exempt status • Who is required to submit background checks after the submission of the statement of intent for religious exempt status • What is included in a background check • Timing for background checks after the submission of the statement of intent for religious exempt status • Repeat requirement <p>Listing background check requirements by program type allows individuals to quickly find the information needed to comply with federal and state requirements. Background checks for child day providers helps protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment.</p>
	130		<p>“Requirements for Licensed Child Day Centers”</p> <p>This section new details requirements specific to licensed child day centers:</p> <ul style="list-style-type: none"> • Who is required to submit background checks at initial application for licensure • Who is required to submit background checks after initial licensure • What is included in a background check • Timing for background checks after initial application • Repeat requirement <p>Listing background check requirements by program type allows individuals to quickly find the information needed to comply with federal and state requirements. Background checks for child day providers helps protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background</p>

			checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment.
	140		<p>“Requirements for Unlicensed Subsidy Vendors”</p> <p>This new section details requirements specific to child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state, or local child care funds:</p> <ul style="list-style-type: none"> • Who is required to submit background checks at initial application to become a subsidy vendor • Who is required to submit background checks after initial application • What is included in a background check • Timing for background checks after initial application • Repeat requirement <p>Listing background check requirements by program type allows individuals to quickly find the information needed to comply with federal and state requirements. Background checks for child day providers helps protect the health, safety, and welfare of children receiving services by ensuring that persons required to have background checks have not been convicted of an offense which prohibits licensure, registration, approval, or employment.</p>
40 D 3	150	Section 40 “Identifying who is covered by this regulation”, subsection D 3 includes required background checks for independent contract employees and employees hired by a contract agency.	<p>“Requirements for Independent Contract Employees and Employees Hired By a Contract Agency in Child Day Programs”</p> <p>This section details requirements specific to contract employees who will be involved in the day-to-day operations, who will be alone with, in control of, or supervising children who are under the direct supervision of the facility.</p> <p>An independent contractor or employee of a contract agency with whom the facility has an agreement to provide services to children who are under the direct supervision of the facility, shall submit background checks as if they are an employee of the facility if the</p>

			<p>individual will be involved in the day-to-day operations of the facility; counted in ratio; or will be alone with, in control of, or supervising one or more children at a licensed, registered, or approved facility.</p> <p>These requirements align the regulation with federal requirements in the Child Care and Development Block Grant and the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
80 90	160	<p>Section 80 “Describing the waiver of criminal conviction” This section defined a waiver.</p> <p>Section 90 “Identifying who may apply for a waiver” This section defined the conditions in which the Commissioner could grant a waiver.</p>	<p>“Waiver of Criminal Conviction”</p> <p>This section combines two existing sections, describes a waiver, and outlines when the Commissioner may grant a waiver. Changes to the barrier crimes section of the Code of Virginia included adding nonbarrier felony convictions to the barrier crimes list for child day care providers. Section 63.2-1723 describes who can seek a waiver and under what conditions the Commissioner may grant a waiver. The Commissioner cannot grant a waiver if there is a barrier crime conviction. This section was updated to reflect what is currently allowable in Code.</p> <p>These requirements align the regulation with the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
100 110	170	<p>Section 100 “Explaining waiver application requirements” This section requires an individual to request an application package from the licensing office or contracting organization and pay an application fee. It also requires the Commissioner to acknowledge receipt of the application.</p> <p>Section 110 “Describing the contents of a waiver application” This section describes what needs to be included with the application.</p>	<p>“Explaining Waiver Application Requirements and Contents of a Waiver”</p> <p>This section covers how to request and prepare an application for a waiver. This section requires an individual to request an application package from the licensing office or contracting organization. This section describes what needs to be included with the application.</p> <p>There is no longer a requirement for the Commissioner to acknowledge receipt of the application. This is a reflection of current practice where regional licensing staff accept the application and provide an initial review.</p> <p>There is no longer a separate subsection for another adult living in a family day home because everyone falls under the same requirements. The requirement to</p>

			<p>assess the safety of the children was moved to section 180.</p> <p>These requirements align the regulation with the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
120	180	<p>Section 120 “Describing the waiver evaluation criteria” This section allows the Commissioner to delegate processing and evaluating waiver requests and outlines the basis for the final decision. This section describes when a waiver is considered abandoned and states a waiver is not appealable.</p>	<p>“Describing the Waiver Evaluation Criteria”</p> <p>This section includes notification of a home study, a list of what the final decision is based upon, and states that waiver decisions are not appealable.</p> <p>The criminal record requirements of the Safe Families and Adoption Act of 1997 permits a waiver for potential foster parents in a licensed child-placing agency so the requirement to review the Safe Families and Adoption Act has been removed. The Safe Families and Adoption Act of 1997 has the same requirements as the Child Care Development Block Grant.</p> <p>These requirements align the regulation with the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
130	190	<p>Section 130 “Describing the waiver decision notification process” This section requires the notification of approval by certified mail. This section includes what must be included in a waiver.</p>	<p>“Describing the Waiver Decision Notification Process”</p> <p>This section requires the notification of approval by certified mail. This section includes what must be included in a waiver.</p> <p>These requirements align the regulation with the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
140	200	<p>Section 140 “Modifying, revoking, and terminating waivers” This section allows for modifications of a waiver. This section allows the Commissioner to revoke a waiver and requires notification by certified mail if it is revoked. This section defines when a waiver expires.</p>	<p>“Modifying, Revoking, and Terminating Waivers”</p> <p>This section has been updated to reflect the limited circumstances in which a waiver can be granted. The section allows for modification of the waiver, for the Commissioner to revoke a waiver, and outlines the situation where a waiver would automatically expire.</p> <p>These requirements align the regulation with the Code of Virginia. The impact of</p>

			these changes will be increased protection of children in care.
150	210	Section 150 “Explaining the waiver public notification requirements” This section describes how the public is informed of the waiver.	<p>“Explaining the Waiver Public Notification Requirements”</p> <p>The waiver must be posted and parents/guardians must be notified in writing of the waiver.</p> <p>Changes to the barrier crimes section of the Code included adding nonbarrier felony convictions to the barrier crimes list for child day care providers. Section 63.2-1723 of the Code describes who can seek a waiver and under what conditions the Commissioner may grant a waiver. The Commissioner cannot grant a waiver if there is a barrier crime conviction and nonbarrier felony convictions apply to operators, employees, and volunteers so they are removed from this section. Section 63.2-1723 of the Code specifies that adult household members in a family day home may request a waiver for not more than one misdemeanor assault and battery or assault and battery against a family member conviction so that group has been left in this section.</p> <p>These requirements align the regulation with the Code of Virginia. The impact of these changes will be increased protection of children in care.</p>
Forms	none	<p>Criminal History/Sex Offender and Crimes Against Minors Registry Search Form, SP-230 (rev. 12/2012)</p> <p>Sworn Statement or Affirmation for Child Placing Agencies, 032-05-0974-04-eng (eff. 7/2014)</p> <p>Central Registry Release of Information Form, 032-02-0151-12-eng (eff. 8/2015)</p> <p>Sworn Statement or Affirmation for Child Day Programs, 032-05-0160-09-eng (eff. 7/2014)</p> <p>Sworn Statement or Affirmation for Foster and Adoptive Parents, Adult</p>	<p>These forms were removed and will not be replaced in the regulation. This information is on the department’s website under the appropriate program. The forms listed are all out of date.</p>

		Household Members, 032-05-0973-04-eng (eff. 7/2014)	
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