



Periodic Review / Retain Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-90
Regulation title	Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers
Document preparation date	August 20, 2008

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 36 (2006) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Section 63.2-217 of the Code of Virginia (the Code) gives the State Board of Social Services authority to adopt and enforce regulations to carry out the purposes of Title 63.2 of the Code concerning Social Services. Chapter 17 of Title 63.2 contains statutes for the licensure of assisted living facilities and adult day care centers including requirements for background checks in §§ 63.2-1702, 63.2-1720, 63.2-1721, and 63.2-1722.

Alternatives

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

An alternative for achieving the purpose of the regulation would be to use the Code for enforcement of the requirements for background checks for assisted living facilities and adult day care centers. However, the language of the statute would be difficult for assisted living and adult day care providers and licensing inspectors to interpret. This regulation is the least burdensome alternative available for achieving the purpose of the regulation.

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. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
<p>Sherri Brown L.P.N. Administrator Golden Age Retirement Home</p>	<p>I personally feel that the criminal record checks is necessary, as you know some persons are not always "truthful" when filling out the applications for jobs or upon interview, so I feel that the background checks are a plus.</p>	<p>Agency agrees.</p>
<p>Randy Scott Administrator St. Mary's Woods</p>	<p>I agree with the need for criminal background checks in assisted living facilities. However, many facilities hire teenagers under 18 to work as waitstaff in the evenings. It not only gives them a job but it is a good inter-generational bonus as well. The problem with doing checks on anyone under 18 is that their records are sealed and not able to be released or noted. The request for a check will always come back clean. If the fear is someone could have been charged as an adult it is my belief that type of person is not going to be out of jail or detection to work anyway. The turn over of a young staff is high by general nature so this is why I suggest amending the need to check anyone under 18 at time of hire. You can verify this with the State Police. The change will save money and time.</p>	<p>The Code of Virginia requires any employee, regardless of age, to have a criminal record check so the suggested change can only be achieved through legislative action.</p>
<p>Kelly Sawyers</p>	<p>I think there is a tremendous need to retain the regulation for criminal background checks in ALF's. I can understand that it is time consuming and cost money, but that is a minor consequence to protecting vulnerable adults. The crimes that are listed that prevent someone from being hired should not be changed.</p>	<p>Agency agrees.</p>

<p>Charles Riley, Administrator Oak Grove Residential Care, Inc.</p>	<p>We have found regulation (22 VAC 40-90) to be unnecessary and a waste of time - it should be terminated - the essential need for the regulation did not exist to begin with - after running back ground checks for all of our residents nothing came up - which is interesting since at that time we did have an elderly MR that was a sex offender but since he was MR had never been charged or convicted - this regulation has many short comings which prevent it from accomplishing intended (or imagined) goals.</p>	<p>This regulation does not require background checks on residents. It does require a background check consisting of a criminal history record check and a sworn disclosure statement for applicants for licensure and for employees. No volunteer may serve in an assisted living facility without the permission or under the supervision of a person who has received a background check.</p> <p>The regulation “Standards for Licensed Assisted Living Facilities (22 VAC 40-72)” contains the Code of Virginia requirement that assisted living facilities determine, prior to admission, whether a potential resident is a registered sex offender if the resident will have a length of stay three days or longer (22 VAC 40-72-367). This can be done on-line by searching the sex offender registry at the State Police website: http://sex-offender.vsp.virginia.gov/sor/html/search.htm</p> <p>The assisted living facility is also required to register with the State Police to receive notice of the registration or re-registration of sex offenders within the same or nearby zip code (22 VAC 40-72-55).</p>
<p>Ken Koontz, Licensing Inspector</p>	<p>Have the felony convictions align with the children requirements and make any felony conviction a barrier for 5 years.</p> <p>Have all CRC [criminal record checks] renewed every three to five years</p>	<p>The Code of Virginia defines what offenses are barrier crimes so the suggested change can only be achieved through legislative action.</p> <p>The Division of Licensing Programs will discuss this suggestion with an informal advisory group at the time of the next proposed comprehensive revision of the regulation.</p>
<p>Janeas Munden, RN Wellness Concepts LTC Pharmacy</p>	<p>As a consulting nurse, I am in contact with residents from time to time and am required to have a background check. My employer, Wellness Concepts Pharmacy, does maintain this in my personnel files. I get calls from individual facilities asking for copies of the background check for their files. I have some issue with the form being out there in so many different places because of my ssn and my employers credit card number being on the form.</p> <p>As medical staff coordinator for</p>	<p>Since 22 VAC 40-90-50 currently allows this procedure for substitute staff from temporary agencies, the Division of Licensing Programs will discuss this suggestion with an informal advisory group at the time of the next proposed comprehensive revision of the regulation.</p>

	<p>an accredited hospital, I learned that JCAHO allowed the hospital to accept a statement from its vendors attesting that a criminal background check had been run on employees that provided services on a contractual basis to the hospital. As long as the individual employee was named and the hospital could request a copy of the background check from the contracted agency at anytime, the statement was all that was needed.</p> <p>This would satisfy the standard requiring the background check on contracted personnel and be a much more manageable way of handling all the paperwork. Because it is a system approved by the joint commission that inspects hospitals, I think it would satisfy our regulations.</p>	
<p>Paula Rose Executive Director- Sunrise of Countryside</p>	<p>I would very much like to see the regulation for background checks be continued and enforced. We currently use MyCertiphi on line prior to hiring which gives a response within 24 hrs for criminal history check. We also do the VA. State Criminal/Sex Offender Registry search through Va. State Police which can take up to 2 weeks. I would like to see the MyCertiphi meet the regulation or the State come back sooner.</p>	<p>The Code of Virginia requires a criminal history record check to be obtained from the Central Criminal Records Exchange so the suggested change can only be achieved through legislative action.</p>
<p>Katherine W. Shilling, Administrator Harmony Hall Assisted Living Facility</p>	<p>I am in agreement of a less burdensome alternative to the regulation. The present check is costly and time consuming when you are making trips back and forth to the bank to have two areas of the form notarized, with ongoing staffing shortages there are many times when leaving the facility to complete the required document is impossible.</p>	<p>The Code of Virginia requires a criminal history record check to be obtained from the Central Criminal Records Exchange with the State Police. The State Police requires certain criminal history record request forms to be notarized so the suggested change cannot be achieved through this regulation.</p>

<p>Jill Sproul, Executive Director Baldwin Park Retirement Community</p>	<p>Brightview Senior Living requires a country wide background check. DSS requires a VA State Police check. I pay for both even though the VA check is not as comprehensive. This, needless to say is a waste of money. For those communities who are only running the VA check, obviously they are not checking a complete history.</p>	<p>The Code of Virginia requires a criminal history record check to be obtained from the Central Criminal Records Exchange so the suggested change can only be achieved through legislative action.</p>
<p>Laura Nichols, MS Director Northern Virginia Long-Term Care Ombudsman Program</p>	<p>Seems easy to have problems with validity when staff are able to provide the sworn statement or affirmation and the criminal history record report.</p> <p>Volunteers should be held to the same standard as employees, especially ones that will be alone and/or working with residents at times.</p> <p>A background check should be obtained before employment or working with any residents.</p> <p>Shouldn't a background check be requested on all employees? Even if moving between facilities with the same ownership, a copy [of the criminal history record report] is needed.</p> <p>"Facilities using temporary agencies for the provision of substitute staff shall request a letter from the agency containing...a statement verifying that the criminal history record report has been obtained within 30 days of employment, is on file at the temporary agency, and does not contain barrier crimes." - This seems like a huge conflict of interest for the temp agency. Would they be likely to say that the criminal history record report is outdated and not get paid? They should <u>at least</u> provide a copy.</p>	<p>The Code of Virginia allows this so the suggested change can only be achieved through legislative action.</p> <p>The Code of Virginia does not require volunteers to have background checks. The Code only requires that volunteers serve with the permission or under the supervision of a person who has had a background check. The suggested change can only be achieved through legislative action.</p> <p>The Code of Virginia allows any employee to work 30 days prior to the facility's receiving a background so the suggested change can only be achieved through legislative action.</p> <p>Background checks are required on all employees. The original of the criminal history record report must be on file at the employee's current place of employment (22 VAC 40-90-50 Exception #1)</p> <p>The Division of Licensing Programs will discuss this suggestion with an informal advisory group at the time of the next proposed comprehensive revision of the regulation.</p>

	<p>“A criminal history record report remains valid as long as the employee remains in continuous service at the same facility” - There should be at least annual updates</p> <p>The regulation’s interference in private enterprise and life: The need for protection of vulnerable residents is greater.</p> <p>Essential need of the regulation: Essential need for this regulation.</p> <p>Less burdensome and intrusive alternatives to the regulation: Not one with validity.</p> <p>Specific and measurable goals that the regulation is intended to achieve: Decreased number of employee against resident incidents (abuse, exploitation).</p> <p>Whether the regulation is clearly written and easily understandable: Mostly.</p>	<p>The Division of Licensing Programs will discuss this suggestion with an informal advisory group at the time of the next proposed comprehensive revision of the regulation.</p> <p>Agency agrees.</p> <p>Agency agrees.</p> <p>Agency agrees.</p> <p>Agency agrees.</p> <p>Agency agrees.</p>
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No informal advisory group was formed for the purpose of assisting with the periodic review. Assisted living facilities, adult day care centers, the assisted living advisory committee, licensing staff, and interested parties were contacted by email for comment.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation is essential to protect the health, safety, and welfare of vulnerable adults in assisted living facilities and adult day care centers.

The regulation is clearly written and understandable by the individuals affected.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The agency is recommending that the regulation stay in effect without change.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

Families should have increased confidence in the safety of their vulnerable adult family members in assisted living facilities and adult day care centers as a result of this regulation that contains requirements for background checks for personnel in those facilities.