



Economic Impact Analysis Virginia Department of Planning and Budget

22 VAC 40-191 – State Board of Social Services Background Checks for Child Welfare Agencies April 17, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Pursuant to changes in the Code of Virginia, the proposed regulations (1) exempt certain persons working, volunteering at child welfare agencies, or operating one, from background check requirements, (2) require child protection services central registry check as a part of the background check process, (3) expand the list of barrier crimes for employment, and (4) change the time frame to receive background checks from 21 days to 30 days. In addition to these, the proposed non-statutory changes include (5) requiring repeat background checks every three years, (6) establishing limited background check requirements for those teenagers living in family day homes, (7) allowing child welfare agencies to accept background checks dated less than six months from when contract employees begin providing services at facilities, and (8) allowing persons to take background check findings with them and use them for another application within 90 days.

Estimated Economic Impact

The proposed regulations will replace current background check regulations (22 VAC 40-190) for child welfare agencies. The child welfare agencies subject to the proposed regulations include licensed and voluntarily registered family day homes, child-placing agencies and foster and adoptive homes approved by child-placing agencies, family day systems and family day homes approved by family day systems, adults and certain teenagers living in family day or foster or adoptive homes, and religious exempt child day centers. The number of these facilities in the Commonwealth is about 4,200. The personnel working at these facilities come in supervised or unsupervised contact with up to 98,000 children depending on their job functions.

Required background checks are: a sworn statement or affirmation, a criminal history check conducted by the State Police, and a search of the child protective services central registry for child abuse and neglect. The main purpose of the background check requirement is to reduce potential risk of harm to children by the personnel working or volunteering at these facilities or being in a supervisory relationship alone with children. The rationale is that persons with certain criminal convictions and founded findings of child abuse and neglect are more likely to harm children than other persons without such backgrounds, and background checks would probably increase protection of these children. Although the objective of background checks is clear, there is no available study assessing potential risks. Thus, the significance and types of risks that may be present, as well as the success of background checks in reducing potential risks, are not well known. However, despite the little knowledge available in this area, it is standard practice to require some form of background checks for the employees and volunteers at these types of facilities nationwide.

Some of the changes between the proposed and current regulations are mandated by the changes in the Code of Virginia. The General Assembly made several changes to background check requirements since 1995. The proposed regulations incorporate these statutory changes. Since these statutory changes are in effect for several years, no immediate economic impact is expected. Pursuant to Code of Virginia, §63.2-1720, one of the changes provides background check exemptions for certain employee and volunteer positions at child welfare agencies. This affects approximately 2,570 employees and 6,530 volunteers who are not alone with, in control of, or supervising children. Additionally, background checks are no longer required for

approximately 4,950 board members of child welfare agencies. Each background check includes a child protective services check and a criminal history check which cost \$5 and \$15, respectively. The fiscal effect of these exemptions is about a \$281,000 reduction in background check costs per year. Fees for background checks may be paid by the facility or by the individual. Thus, both facilities and individuals benefit from this change in terms of averted background check costs. The reduction in the background check requests also reduces revenues collected by the State Police to conduct the criminal history checks and by the Department of Social Services (DSS) to conduct child protective services central registry checks. In addition to the fiscal effect, the facilities and individuals probably experience additional cost savings in administrative time and possibly other expenses associated with managing and obtaining background checks. It is also possible that some of the board members, employees, and volunteers may have a disqualifying record, but may be able to obtain a position with child welfare agencies, as they are not required to obtain background checks. This proposed change benefits these individuals because they could not otherwise work for these facilities.

On the other hand, the background check exemptions may introduce some additional costs in terms of greater potential risk of harm to children at the child welfare agencies. Although the risks to children may be higher, it is worthwhile to note that these individuals are not in direct contact with the children and therefore the change in the potential risks may be insignificant. There is no available data however to assess the change in the level of protection afforded to these children.

The statutory changes also mandate the search of the central registry since 1998 to determine if the person has ever been the subject of a founded complaint of child abuse and neglect in Virginia. It is estimated that this change probably affects 5,060 persons annually in family day homes, child placing agencies, and religious exempt centers plus an unknown number of adoptive and foster homes. Since each child registry check costs \$5, the fiscal effects of this change include about a \$25,300 increase per year in costs excluding adoptive and foster homes and an equivalent increase in DSS central registry check revenues. There are probably additional administrative costs of conducting these central registry checks. Some of the providers, personnel, or volunteers may be disqualified and may incur significant economic losses. On the other hand, with the child protective services central registry check, the child welfare agencies

are able to find about the child abuse and neglect history of applicants and may be able to reduce risk of harm to children by screening these activities.

Pursuant to §63.2-1719 of the Code of Virginia, another significant change is expanding the list of crimes that are barriers to operating, working, or volunteering at a child welfare agency. The list of barrier crimes is expanded to include manslaughter, malicious wounding by mob, assault and bodily wounding, car jacking, extortion by threat, felony stalking, arson, burglary, any felony violation related to possession or use of a machine gun, use of a sawed-off shotgun in a crime of violence, possession of child pornography, electronic facilitation of pornography, employing or permitting a minor to assist in obscenity and related offenses, delivery of drugs to prisoners, escape from jail, felonies by prisoners, and an equivalent offense in another state. People with a criminal background including these offenses are disqualified from employment with or volunteering for child welfare agencies. In addition, if the providers, current employees, or volunteers discovered to have history of these offenses during the proposed three year repeat checks (discussed later in this report), their license, employment, or voluntary activity will be terminated as current employees are not grandfathered from the expanded list of crimes. Thus, the proposed expansion of barrier crimes not only affects future candidates but also current providers, employees, and volunteers. The likely economic effects of this change are a potentially higher turnover rate among providers, employees, and volunteers and possibly an increase in labor costs of operating a child welfare agency and a potential decrease in risk of harm to children. Given the lack of data, none of these effects could be quantified.

Also, pursuant to §63.2-1720 of the Code of Virginia, the timeframe to receive background checks is increased from 21 days to 30 days. Prior to this change, if a child welfare agency did not receive background checks within 21 days, they were found noncompliant during visits by licensing inspectors and had to develop an action plan to address the noncompliance. Increasing the timeframe to 30 days reduces the incidence of being found noncompliant and probably provides some administrative cost savings to the agencies as well as to DSS. However, this change allows new employees or volunteers to be in contact with children for an additional 9 days without having to have the background checks and has the potential to increase the risk of harm.

In addition to these, a non-statutory change will establish repeat background check requirements every three years for providers, employees, volunteers, and any others required to obtain checks and every two years for voluntarily registered family day homes. Currently, background checks are conducted once at the beginning employment/volunteer service and repeated if a person's status changes. It is estimated that repeat background checks will be conducted on approximately 8,606 providers, employees, and volunteers working at child welfare agencies annually. Annual fiscal costs of these criminal background checks and child registry checks on child welfare providers, employees, and job applicants are expected to be about \$172,120. DSS and the State Police will see an increase in their background checks revenues. In addition to the fiscal effect, providers and employees will probably experience an increase in administrative time and possibly other expenses associated with managing and obtaining background checks. It is also possible that some of the employees and volunteers will be found to have a disqualifying offense or finding since after their initial date of employment. These individuals will lose their provider, employee, or volunteer status. Thus, perhaps a reduction in potential risk of harm to children at the child welfare agencies may be expected. However, there is no available information on the number of employees who may be discovered to have a disqualifying record during the repeat checks and there is no available data to assess the potential increase in the level of protection afforded to children.

Additionally, the proposed changes will add a new child protective services check requirement for 14-year old to 18-year old teenagers living in approximately 1,300 voluntarily registered family day homes and homes approved by family day systems. DSS estimates that 325 additional persons will be required to obtain child protective services check because of this requirement. Thus, the fiscal effect of this change is an additional \$1,625 on family day homes or other approved homes. If a teenager is found to have a disqualifying record on the child protective services central registry, the family day home, foster, or adoptive home will no longer be able to provide care and will likely incur significant economic losses. There is also possible increase in administrative costs on these child welfare agencies and potential reduction in risk of harm to other children staying at the same facilities.

The proposed changes will also allow child welfare facilities to accept satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at facilities. This change will

allow the use of background checks for contract workers up to six months rather than requiring a new check every time they contract with a new facility. DSS estimates that approximately 450 contract employees may be affected by this change providing about \$9,000 cost savings to the facilities, contractors, or contract employees. Similar to the other changes, there is likely to be a reduction in administrative costs to these facilities, contractors, or contract employees and a corresponding reduction in background check revenues of DSS and the State Police. There may also be a change in the potential risk of harm to children as the facilities will not be informed about the most recent disqualifying activities of these 450 employees at the time of employment.

Finally, the proposed regulations will allow persons to take background check findings with them and use them for another application within 90 days. This requirement is estimated to affect approximately 200 people from religious exempt centers, family day homes, and child placing agencies and estimated to provide approximately \$2,000 in fiscal cost savings. An equal amount of reduction in revenues of the State Police and DSS would follow. In addition to the fiscal impact, savings in administrative costs are expected. On the other hand, those people who committed a disqualifying offense during the 90-day period will be able to obtain employment and may increase potential risk of harm to children.

Businesses and Entities Affected

The proposed regulations apply to approximately 3,200 family day homes and systems, 70 child placing agencies, 900 religious exempt child day centers, and an unknown number of licensed foster and adoptive homes. These facilities may be serving up to 98,000 children in Virginia.

Localities Particularly Affected

The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment

In general, exempting persons from background check requirements will probably increase the pool of eligible employees while other changes such as expanding the list of barrier crimes or establishing repeat background checks will reduce the same pool or increase turnover. However, the net effect on employment is not known due to lack of data.

Effects on the Use and Value of Private Property

The proposed regulations may have some effect on the profitability of privately owned child welfare agencies through changes in background check costs and administrative costs. Some requirements are expected to provide cost savings while others are expected to increase costs to specific facilities or group of facilities. The changes in profitability of the for-profit family day systems or child placing agencies will most likely be reflected in their value. However, since it is not known which effect will dominate, an overall conclusion cannot be drawn.