



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-191
Regulation title(s)	Background Checks for Child Welfare Agencies
Action title	Repeal and Replace Background Check Regulation
Date this document prepared	August 15, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

Background Checks for Child Welfare Agencies, 22VAC40-191, sets forth standards 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. The intent of this action is to repeal and replace the current regulation to make it consistent with federal laws and the Code of Virginia, and to make any other changes the agency deems necessary after comments and review. There are multiple changes needed to correct this regulation, including 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. 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.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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's overall regulatory authority.

The State Board of Social Services has authority under § 63.2-217 to adopt regulations as may be necessary to carry out the purpose of Title 63.2, Welfare (Social Services). Sections 63.2-217 and 63.2-1734 provide the legal authority for the State Board of Social Services to adopt regulations for child welfare agencies.

Purpose

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

The regulation overall is essential to protecting 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. The regulatory action is essential to the continued health, safety and welfare of children because it will provide critical clarification on background check requirements and ensure compliance with current federal and state laws.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

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 are intended to ensure clarification about background check requirements.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

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.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

A panel will not be used.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail to Deborah Eves, 801 E. Main Street, 9th floor, Richmond, VA 23219 or by email to deborah.eves@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

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