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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-705
VAC Chapter title(s)	Child Protective Services
Action title	Remove Notary Requirement for Consent to Central Registry System Check
Date this document prepared	April 19, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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 Department of Social Services (DSS) Office of Background Investigations (OBI) Central Virginia Child Abuse and Neglect Central Registry Unit (CRU) performs searches at the request of individuals who seek to provide services or care to children to determine if those individuals have a founded case of child abuse or neglect. The current regulation requires, in part, that an individual's consent for a search of the Central Registry System (CRS) be notarized. This regulatory action will remove the notary requirement in order to expedite the search process and make it less burdensome for individuals who wish to provide services or care to children through employment, foster care, adoption, or volunteer opportunities.

The State Board of Social Services proposed this change as an Emergency/NOIRA. The emergency action became effective on September 2, 2022, and expires on March 1, 2024. The Board now seeks to make this emergency change permanent. The proposed regulation is identical to the emergency regulation.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

Board: State Board of Social Services
CRS: Central Registry System
CRU: Central Registry Unit
DSS: Department of Social Services
OBI: Office of Background Investigations

Mandate and Impetus

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, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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 mandate/impetus for the proposed regulation is a board decision to make the current emergency regulation permanent. The current notary requirement for a CRS check delays the application process for individuals who wish to provide services or care for children. Child care is an essential service in allowing businesses to return to normal operations post-pandemic. With businesses re-opening and employment opportunities increasing, working parents need safe, reliable, and well-staffed child care for their children. With more than 6,000 licensed child care providers in the Commonwealth, there is a critical need to expedite the application and hiring processes so that child care workers can provide services and care as quickly as possible, thus allowing parents to work to ensure their families’ financial stability and well-being. In addition, children’s residential facilities and foster care placements provide for the care and well-being of our most vulnerable children, and delays in CRS processing result in delays in staffing and placements for these children. This is particularly important now, since Virginia is experiencing a critical shortage of foster homes and other placements for children.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The promulgating agency is the State Board of Social Services. The Board has legal authority pursuant to Virginia Code § 63.2-217 to adopt regulations as necessary or desirable to carry out the purpose of Title 63.2. Under Virginia Code § 63.2-203, the Commissioner of DSS is charged with enforcing regulations adopted by the Board. Section 63.2-1501, et seq. provides the authority for the Child Protective Services program within Title 63.2. Virginia Code § 63.2-1515 provides that the Board prescribes regulations regarding the Central Registry.

Purpose

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 is intended to solve.

The regulatory change is essential to the health, safety and welfare of citizens, as it will 1) expedite the application and hiring processes so that child care workers can provide services and care as quickly as possible, and 2) allow working parents to ensure their families' financial stability and well-being. In addition, children's residential facilities and foster care placements provide for the care and well-being of our most vulnerable children, and delays in CRS processing result in delays in staffing and placements for these children. This is particularly important now, since Virginia is experiencing a critical shortage of foster homes and other placements for children.

The CRU is housed within OBI. The CRU processes requests for all children's programs licensed in Virginia, as well as out of state and international requests for applicants who may have previously lived in Virginia. Virginia Code § 63.2-1515 mandates that searches be completed within ten business days of receiving the request.

The CRS within the CRU contains names of individuals identified as abusers or neglectors in founded child abuse and neglect investigations conducted in Virginia. Findings are made by Child Protective Services staff in local departments of social services and are maintained by DSS. The request volume of search requests varies from 750 per day to 1,600 per day during peak season, which runs late April through September.

Virginia is one of just 13 states that requires notarization of an applicant's consent to a Central Registry search. Child care providers mail the applicant's notarized authorization for the Central Registry request, along with payment, to the CRU to conduct the search. The notary requirement slows down this process and places a burden on applicants, who must print the application form, locate and travel to a notary, and then give the notarized form to the child care provider.

The high volume of daily requests, manual processing, and staffing requirements can cause delays that affect the ability of the CRU to meet the mandatory timeframe of ten days to process requests. In an effort to resolve these issues and expedite this process, DSS is currently implementing the new Virginia Enterprise Licensing Application (VELA) public-facing portal, which will eliminate the need for the manual submission of documents, manual data entry, and mailing of forms and payments. The requirement that an applicant's consent to a Central Registry search be notarized remains a regulatory requirement that will be an impediment to facilitating and expediting this process in order to better serve the citizens of the Commonwealth and meet the mandatory timeframe of ten days to process requests.

Making the application process less onerous will allow qualified individuals to be approved more quickly, so that they can begin working or volunteering with children sooner, allow child care providers to hire staff more quickly, and allow volunteer organizations to bring on volunteers more quickly. This is particularly important in light of current shortages of affordable, accessible child care as well as staffing shortages in the Commonwealth. Ensuring that families have access to child care and that facilities are well-staffed is essential to families' financial well-being and the health, safety, and welfare of children in care. In addition, Virginia is currently experiencing a critical shortage of foster homes. Making the CRS process faster and easier will alleviate delays in staffing and placements for children's residential facilities and foster care placements.

Substance

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.

- In 22VAC40-705-160(A)(3), changing “the individual’s notarized consent” to “the individual’s signed consent.”
- In 22VAC40-705-170(A), changing “notarized signature” to “signature.”

Issues

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.

The primary advantage of this regulatory action would be the ability to facilitate and expedite the hiring of staff who provide services or care to children. During the COVID-19 pandemic, many child care facilities closed and others struggled to maintain the required staffing levels to provide adequate care. As facilities have started to re-open and more people are back at work, hiring staff has continued to be challenging as the demand for child care has increased. Eliminating the notary requirement in this regulation would remove an inconvenient, burdensome, and time-consuming element of the application process for individuals who wish to provide care or services to children and would allow providers to get staff into place more quickly. Others who wish to provide services or care to children, such as volunteers, foster parents, and those who work in child placing agencies, would benefit similarly from not having to meet this requirement. Advantages to the agency include the improvement of customer service to child care providers and staff and others who provide services and care to children by offering them an easier and less cumbersome process. This process would also be more efficient for agency staff who process applications. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

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 is no requirement of this regulatory change that is more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “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

All state agency applicants who wish to provide services to children through programs and facilities via employment or volunteer services will be particularly affected.

Localities Particularly Affected

All foster care and adoptive applicants as well as local department of social service agencies who wish to provide services to children through programs and facilities via employment or volunteer services will be particularly affected.

Other Entities Particularly Affected

Childcare providers and applicants who wish to provide services to children through employment or volunteer services will be particularly affected.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, 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. Keep in mind that this is the proposed 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>This regulatory change will not have any economic impact on this agency. There will be no projected costs, savings, fees, or revenues resulting from the change.</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>This regulatory change will not have any economic impact on any other state agency. There will be no projected costs, savings, fees, or revenues resulting from the change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Less burdensome requirements for applicants and expedited hiring/volunteer processes for providers.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>This regulatory change will not have any economic impact on localities. There will be no</p>
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	projected costs, savings, fees, or revenues resulting from the change.
Benefits the regulatory change is designed to produce.	Less burdensome requirements for applicants and expedited hiring/volunteer processes for providers.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	This regulatory change will affect child care providers, volunteer entities, individuals who wish to provide services or care to children, and children in need of care or services. The change will facilitate and expedite the application process for those wishing to provide services or care to children since they will no longer be required to search out, and possibly pay for, notarization of their consent for a search of the Central Registry. As a result, they will be able to obtain employment or provide services such as foster care in a shorter time frame. In addition, child care providers and volunteer entities will be able to receive applications more quickly, which will expedite their hiring/volunteer process. As a result, children in need of care or services will benefit from being able to obtain care or services sooner.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: 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.	There are more than 6,000 licensed child care providers in the Commonwealth and an untold number of organizations that have volunteers who work with children, including churches, schools, sporting organizations, scouting programs, and many others. There are currently 5,400 children in Virginia's foster care system.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: 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.	Less cost for applicants as they will no longer be required to pay for notary services. No changes to costs for other entities.
Benefits the regulatory change is designed to produce.	Less burdensome requirements for applicants and expedited hiring/volunteer processes for providers.

Alternatives to Regulation

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 viable alternatives to achieve the purpose of this regulatory change. This regulatory change reduces burden.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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 viable alternative regulatory methods to achieve the purpose of this regulatory change.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, 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, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This form is not being used to announce a periodic review or small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Committer	Comment	Agency response
Anonymous (150936)	This commenter opposes the change. The commenter stated that CPS is corrupt and full of pedophiles and facilitators. The commenter recommended making it harder to search, rather than easier.	This change will simply allow background checks to be completed and results released with the applicant's signature to indicate his/her consent. It will expedite the application process but will not change the process itself.
Anonymous (179845)	This commenter opposes the change. The commenter stated that the notary requirement is an important safeguard and a minor inconvenience for the applicant.	The notary requirement can be burdensome for those who wish to provide services or care to children, particularly for applicants who may lack transportation or live in rural areas where access to notaries may be limited. Allowing background checks to be completed and results released with the applicant's signed consent will expedite processes but will not change the processes themselves.
Lisa Helene Bacalski (181841)	This commenter supports the change. The commenter stated that obtaining notarization can be onerous and is unnecessary in the digital age. This requirement is a barrier to ensuring children are safe.	The notary requirement can be burdensome for those who wish to provide services or care to children, particularly for applicants who may lack transportation or live in rural areas where access to notaries may be limited. Allowing background checks to be completed and results released with the applicant's signed consent will expedite processes but will not change the processes themselves.
Anonymous (185682)	This commenter opposes the change. The commenter stated that verification of identify is important due to fraud concerns.	The notary requirement can be onerous for those who wish to provide services or care to children, particularly for applicants who may lack transportation or live in rural areas where access to notaries may be limited. Allowing background checks to be completed and results released with the applicant's signed consent will expedite processes but will not change the processes themselves. The hiring authority or other entity would be responsible for verifying the identity of the applicant.
Anonymous (187035)	This commenter supports the change. The commenter stated that electronic submission of applications without the notary requirement allows for faster responses. The current	The notary requirement can be burdensome for those who wish to provide services or care to children, particularly for applicants who may lack transportation or live in rural areas where access to notaries may be limited. Allowing background checks to be

	requirement delays the process for individuals who are seeking to obtain employment or become foster parents.	completed and results released with the applicant's signed consent will expedite processes but will not change the processes themselves.
Christina Smith (187869)	This commenter opposes the change. The commenter stated that some people in social services are not good people; we shouldn't make things easier for the bad people. Better safe than sorry.	The notary requirement can be burdensome for those who wish to provide services or care to children, particularly for applicants who may lack transportation or live in rural areas where access to notaries may be limited. Allowing background checks to be completed and results released with the applicant's signed consent will expedite processes but will not change the processes themselves.
Vi (190963)	This commenter opposes the change. The commenter stated that the change would make it easier for CPS to execute hateful, discriminatory policies.	The notary requirement can be burdensome for those who wish to provide services or care to children, particularly for applicants who may lack transportation or live in rural areas where access to notaries may be limited. Allowing background checks to be completed and results released with the applicant's signed consent will expedite processes but will not change the processes themselves.
Anonymous (198658)	This commenter supports the change. The commenter stated that the change will expedite the process for foster home approval.	The notary requirement can be burdensome for those who wish to provide services or care to children, particularly for applicants who may lack transportation or live in rural areas where access to notaries may be limited. Allowing background checks to be completed and results released with the applicant's signed consent will expedite processes but will not change the processes themselves.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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>. Comments may also be submitted by mail, email or fax to Kristen W. Eckstein, Virginia Department of Social Services, Office of Background Investigations, 801 East Main Street, Richmond, Virginia 23219; phone: 804-726-7099; email: Kristen.eckstein@dss.virginia.gov; fax 804-726-7897. 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

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
160	N/A	Subsection (A)3 requires an individual's notarized consent for a search of the Central Registry.	This section is being changed to remove the requirement that the consent be notarized and, instead, require that the consent be signed. The intent is to expedite the search process make it less burdensome for people to provide services and care to children.
170	N/A	Subsection (A) requires a notarized signature authorizing release of information pursuant to a Central Registry search.	As with the change in section 160, the section is being changed to remove the requirement that the consent be notarized and, instead, require that the consent be signed. The intent is to expedite the search process and make it less burdensome for people to provide services and care to children.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage