



COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION
P.O. BOX 2120
RICHMOND, VA 23218-2120

DATE: June 7, 2024

TO: Licensed Child Day Programs, Licensed Short-Term Child Day Centers, Licensed Family Day Homes, Licensed Family Day Systems, Religiously Exempt Child Day Centers, Certified Preschools, Center-Based and Home-Based Programs Participating in the Child Care Subsidy Program, Voluntarily Registered Family Day Homes, and Family Day Homes Approved by a Family Day System

FROM: Jeffrey Williams, Assistant Superintendent - Child Care Health and Safety, Virginia Department of Education

SUBJECT: Background Check Requirements, Information, and Updates

The purpose of this memo is to provide child day programs with important information and updates pertaining to background check requirements, and updates to the Virginia Department of Education's (VDOE) procedures for determining compliance with background check requirements in the Code of Virginia.

Provisional Hire, Effective July 1, 2024

The 2024 General Assembly passed legislation that allows employees at child day programs to begin working after receiving qualifying results on a fingerprint-based background check through the Central Criminal Records Exchange or the Federal Bureau of Investigation if all other background check components have been requested. This legislation provides relief amid a longstanding staffing crisis faced by many child day programs in the Commonwealth since 2020.

[House Bill \(HB\) 1277](#) amends and reenacts § 22.1-289.035 of the Code of Virginia. This legislation allows an applicant for employment or volunteering to be provisionally hired at a child day center, family day home, or family day system, provided that (a) the applicant has received qualifying results on a fingerprint-based background check through the Central Criminal Records Exchange or the Federal Bureau of Investigation and (b) the applicant is supervised at all times by a person who received a qualifying result on a background check conducted in accordance with subsection B of § 22.1-289.035 within the past five years.

This change allows prospective employees and volunteers to be provisionally hired upon receipt of a satisfactory fingerprint check signified by written documentation from the Office of Background Investigations stating that the individual is eligible for hire. Provisionally hired employees and volunteers must be in the line of sight of at least one other staff member who has a complete and satisfactory background check and must not be left alone with children until all components of the background checks required in § 22.1-289.035 of the Code of Virginia are complete.

New applicants for employment and volunteering hired on or after July 1, 2024, may be provisionally hired if the applicant has received qualifying results on a fingerprint-based background check through the Central Criminal Records Exchange or the Federal Bureau of Investigation. Current employees must continue to meet the requirements set out in § 22.1-289.035 of the Code. Previous background check requirements apply to all applicants and volunteers hired prior to July 1, 2024.

Background Check Requirements and Compliance Determination Changes

Effective July 1, 2024, all child day programs must comply with the requirements of § 22.1-289.035 of the Code of Virginia. **There will no longer be a 30-day grace period for Virginia Child Abuse and Neglect Search results or the Out-of-State Child Abuse and Neglect Search requests.**

The Code of Virginia, [§ 22.1-289.035 A](#), requires that the following background check components be completed for all applicants for employment, employees, applicants to serve as volunteers, and volunteers prior to employment or beginning to serve as a volunteer and every five years thereafter:

- Sworn Statement or Affirmation
- National Fingerprint Check
- Virginia Child Abuse and Neglect Central Registry
- Out-of-State Criminal Record Search
- Out-of-State Offender Registry Search
- Out-of-State Child Abuse and Neglect Search

The current regulation, *Background Checks for Child Day Programs and Family Day Systems* has not been updated to include fingerprint criminal record checks and out of state background checks. It allows a search of the Virginia Central Registry to be requested within seven days of hire or beginning volunteer service as long as the results are received within 30 days of hire or beginning service. VDOE has previously required that out-of-state child abuse and neglect checks also be requested within 30 days of employment. These former requirements are not consistent with the Code of Virginia or federal requirements for background checks. **Therefore, effective July 1, 2024, there will no longer be a 30-day grace period for Virginia Child Abuse and Neglect Search results or the Out-of-State Child Abuse and Neglect Search requests.** Instead, these requests must be submitted prior to the date of employment.

All background check components must either be requested or completed pursuant to [§ 22.1-289.035](#) as follows prior to employment.

Background Check Component	Current Requirement	Updated Procedure/Compliance Requirement Effective July 1, 2024	Compliance Determination
Sworn Statement or Affirmation	Prior to employment	Must be completed prior to employment.	Documentation completed by the prospective employee or volunteer prior to date of employment or volunteering on file.
National Fingerprint Check	Results prior to employment	Must be completed and returned prior to employment. Employee or Volunteer may be provisionally hired with completed and satisfactory fingerprint check.	Documentation of eligibility letter prior to date of employment on file.
VA Child Abuse Central Registry	Results within 30 days of employment	Must be requested prior to employment. Employee or Volunteer may be provisionally hired with completed and satisfactory fingerprint check.	Documentation of request made prior to date of employment.
Out-of-State Criminal Record Search	Results prior to employment	Must be requested prior to employment. Employee or Volunteer may be provisionally hired with completed and satisfactory fingerprint check.	Documentation of request made prior to date of employment.
Out of State Sex-Offender Registry Search	Results prior to employment as part of the fingerprint check	Must be requested prior to employment. Providers may use the National Sex Offender website or contact the state directly for out-of-state sex offender registry search requests. Employee or Volunteer may be provisionally hired with completed and satisfactory fingerprint check.	Documentation of request made prior to date of employment.
Out of State Child Abuse and Neglect Search	Requested within 30 days of employment	Must be requested prior to employment. Employee or Volunteer may be provisionally hired with completed and satisfactory fingerprint check.	Documentation of request made prior to date of employment.

The Code of Virginia currently allows for portability of background checks if certain criteria are met. Effective July 1, 2024, [§ 22.1-289.035](#) of the Code will be amended to allow for provisional hire.

Reminders and Additional Information

The following information contains important information regarding VDOE payment for fingerprint checks, procedures for out-of-state checks, and general clarification of requirements for background checks.

- *VDOE to cover the cost for fingerprint checks.* The Virginia Department of Education will continue to cover the cost of fingerprint checks for all providers required to have the check pursuant to §§ 22.1-289.035 and 22.1-289.036 of the Code through **June 30, 2025**. Initial and repeat checks will also continue to be covered during this time.
- *Background check portability.* Background check portability is limited to individuals eligible for portability. The portability eligibility requirements are as follows:
 - The individual must be a prospective employee or volunteer in a Child Day Center, Family Day Home, Religiously Exempt Child Day Center, Certified Preschool, Voluntarily Registered Family Day Home, Family Day System Approved Home, or subsidy provider. Portability is not available to applicants, agents and household members required to obtain background checks pursuant to § 22.1-289.036.
 - The individual must have fingerprints through Fieldprint and/or a Virginia Central Registry search completed within the last five years.
 - The results of the fingerprint check completed within the last five years must indicate that the individual was not convicted of any barrier crime as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or neglect within or outside the commonwealth.
 - The individual must currently be (or within the previous 180 days been) employed by or a volunteer at a child day enter, family day home, family day system, or child day program described in subsection A of § 22.1-289.035.
- *Out-of-State Background Checks.* With the summer months approaching, the following clarification is offered for programs that hire seasonal staff, military personnel or college students who have lived in another state but have not changed their legal address:
 - If a seasonal staff remains employed by the facility and the facility maintains the background check record for the staff member, the background check remains valid for 5 years and a new check must be completed every 5 years. If the staff becomes inactive or is not employed by the facility for 12 months or less, the facility may use the background checks previously completed if the background checks were completed within the last 5 years. If staff returns after more than 12 months, the staff is considered a ‘new hire’ and portability for the staff member must be requested or new background checks must be completed.
 - The Code of Virginia, in §§ 22.1-289.035 B4 and 22.1-289.036 B4 requires that “any” individual required to undergo a background check authorizes

the program to obtain a copy of the results of a criminal history record information check, a sex offender registry check, and a search of the child abuse and neglect registry or equivalent registry from any state in which the individual has “resided” in the preceding five years. VDOE defines the term “lived in” to mean to reside in a place for an extended or permanent period of time. The term “resided” or lived in any other state is not limited to only a legal residence.

Please refer to the [Child Care VA website](#) ‘Background Checks’ for information and comprehensive instructions for completing background check components and the document ‘Instructions for Completing Background Checks’, which will both soon be updated to reflect the changes going into effect on July 1st. Please review updates for child care centers and family day homes in the Virginia Department of Education Readiness Connections. Sign up [here](#).

Please send questions to childcarelicensing@doe.virginia.gov.