



Old Dominion Association of Church Schools

IMPORTANT UPDATE VDSS IMPLEMENTATION OF FINGERPRINT BACKGROUND CHECKS

February 27, 2018

Dear ODACS Friends,

Yesterday I received a memo from Charlene Vincent, director of licensing for the Virginia Department of Social Services. The intent of VDSS is for me to pass the memo along to our Religious Exempt childcare providers. The memo, a copy of which is included with this communication, sets forth a self-pay option for the new fingerprint background check requirement.

On the surface, this development looks like a step in the right direction for our preschool and daycare ministries. Our position throughout the recent stand off has been that we will comply with the new requirement as long as we are allowed to pay for the background checks ourselves; our concern is that allowing VDSS to pay for the background checks using federal dollars may obligate our ministries to a host of new federal requirements by default. Some of those requirements would violate our deeply held Biblical convictions. The proposal set forth in the memo is very different from the reimbursement model that VDSS proposed in January. Since the new proposal would provide that no federal dollars would be spent on our background checks, we believe that there would be no federal strings attached to our compliance.

You may recall, however, that earlier this month VDSS asked me to provide them with a list of ministries that do not wish to accept the federal subsidy for the background checks. I declined to provide such a list, responding that we were waiting to hear the answer from the Attorney General to the questions that Delegate Orrock submitted on our behalf. One of my concerns is that the self-pay option proposed in yesterday's memo presents a different way for VDSS to compile such a list. VDSS has stated that they will use the information to communicate with Fieldprint for the purpose of invoicing the ministries on the list; however, it is not difficult to imagine the list being used as a tool for targeted communications in the future.

One certain down side to the proposal is that following it will result in increased red tape for our preschools and daycares. The new red tape is not extremely egregious, but it will be a minor annoyance at best. VDSS is still refusing to place a simple self-pay

option on the Fieldprint appointment web page, and I seriously doubt that there is any way for us to persuade them to budge on that matter.

Also, I spoke with Delegate Orrock today about the Attorney General's response to our questions. Delegate Orrock sent a written reminder to Mr. Herring last week, but Mr. Herring still has not responded. The Attorney General is legally bound to respond to Delegate Orrock's request on our behalf, but we have no way to know how quickly he plans to do so.

Having said all of that, here are some important points about the memo as well as my advice about how your ministry should respond.

- The memo requires communication with Deborah Eves at the department. My personal communications with Ms. Eves in the past have always been very friendly. I say this only to let you know that we do know who she is and that in the past we have found her to be as helpful and responsive as she is able to be.
- **The memo gives a deadline of March 13, 2018.** *Please note that this is not a deadline for making appointments with Fieldprint; rather, it is a deadline for communicating with Deborah Eves.*
- My advice is to continue to wait for at least another week while we await a response from the Attorney General. If we have not heard from the Attorney General by Friday, March 9, then you may wish to start sending your communications to Deborah Eves on Monday, March 12.
- Please note that the memo states that if your ministry does nothing, then you will be deemed to be in agreement with letting VDSS pay for your background checks with federal dollars!

By way of reminder, the following pages include a copy of the text of our letter to Delegate Orrock.

As always, please feel free to contact me with any questions you may have. Thank you for your prayers regarding this important matter.

Sincerely,

Dan Zacharias
Executive Director

The Honorable Bobby Orrock
PO Box 406
Richmond, VA 23218

January 19, 2018

Dear Delegate Orrock:

ODACS is requesting your help with seeking an opinion from the Attorney General regarding the answers to the following questions.

1. Is the use of federal Child Care and Development Block Grant funds by the Virginia Department of Social Services to subsidize fingerprint background checks permitted under the rules written by the federal Department of Health and Human Services?
2. Does the Virginia Department of Social Services have the legal authority to pay for a childcare center employee's fingerprint background check with federal funds without that childcare center certifying its compliance with the vendor agreement that usually accompanies the subsidy?
3. If the fingerprint background check for an employee of a Religious Exempt childcare center is paid for by the Virginia Department of Social Services using federal funds, does the Religious Exempt childcare center automatically become obligated to the requirements of the vendor agreement?
4. If the answer to question 3 is "Yes," does the answer change if the Religious Exempt childcare center reimburses the Virginia Department of Social Services for the cost of the fingerprint background check?
5. If the answer to question 3 is "No," does the Virginia Department of Social Services have the legal authority under the rules written by the federal Department of Health and Human Services to disperse Child Care and Development Block Grant funds *without* obligating a childcare center to the vendor agreement?
6. Does the use of taxpayer dollars by the state to pay for fingerprint background checks for church-run preschool and/or daycare ministries violate Virginia's Blaine Amendment?
7. If the answer to question 6 is "Yes," is the Blaine Amendment still violated under the reimbursement model that the Virginia Department of Social Services has suggested?

Background Information

Our concerns arise in part from recent communications with VDSS. On November 15, 2017, ODACS sent VDSS a memo with several questions related to the VDSS decision to pay for fingerprint background checks through September 30, 2018. Among the questions we asked were these.

1. What is the source of the money? Does it come from the Childcare and Development Block Grant, does it come from the General Assembly, or does it come from another source?

2. Will Religious Exempt childcare centers be required to sign any kind of certification in order to qualify for the subsidy? If so, what are the details of that certification?
3. Does this appropriation of taxpayer dollars require approval from the General Assembly? If so, how has that approval been granted?
4. Does such a subsidy create an issue with Virginia's Blaine Amendment? In other words, is it legal?

On December 6, 2017, Charlene Vincent responded to my inquiry by e-mail with the following answers.

1. "Federal Child Care and Development Fund dollars will be used for this."
2. "Child care providers that participate in the Child Care Subsidy Program must comply with the program requirements which can be viewed on the VDSS public website at http://www.dss.virginia.gov/files/division/cc/assistance/providers/vendor_agreements/center_vendor_agreement_with_inspection_requirements_rev112116.pdf."
3. and 4. "The Department cannot provide legal opinions or advice to private entities or individuals. We suggest that you consult your legal counsel regarding any questions which may require a legal interpretation."

On December 26, 2017, I sent another message to Charlene Vincent notifying her that our ministries wish to decline the federal subsidy and asking her to advise our ministries on how they can pay for the fingerprint background checks themselves. On January 16, 2018, Charlene Vincent answered by e-mail with the following response.

"I have spoken to DSS finance folks and they agree that you can send a check to reimburse DSS for the fingerprint checks.
Are you sending a check for all your member facilities or will each facility be sending their own reimbursement checks? It would be helpful if you could send me the names of all your member facilities that will be requesting reimbursement.
With each of the reimbursement checks please state that the check is to reimburse DSS for child care criminal background checks and include the names of the persons fingerprinted and whether or not they are an employee or a volunteer.
The charges are: Employees - \$57; Volunteers - \$38
The checks can be sent to DSS to the attention of Sandra Mosely at the below address."
If you have questions please let me know."

While we appreciate the spirit with which the reimbursement model has been suggested, we have lingering concerns about such an arrangement.

As we have stated often in the past, our concerns also arise from our understanding of the principle of Separation of Church and State. We have long been concerned that the current push by the state for increased control of our church-run preschools and daycares creates serious Church-State Separation questions. Despite the fact that some churches do not share this concern, the idea of using taxpayer dollars to subsidize church-run preschool and daycare ministries is very troubling to ODACS ministries.

A Possible Alternative

The VDSS Implementation Memo #4 of January 11, 2018, included the following statement near the end.

“After September 30, 2018, the Fieldprint website will include a payment screen. Programs should be budgeting for this expense beyond September 30, 2018.”

Since there will be a payment screen on the Fieldprint web site after September 30, it is difficult for ODACS to understand why there cannot be an optional payment screen now. We believe that the immediate inclusion of a payment screen on the Fieldprint web site may eliminate our immediate concerns and may possibly preclude the necessity of seeking an opinion from the Attorney General.

We appreciate your service to the Commonwealth and your consideration of our request.

Sincerely,

Dan Zacharias
Executive Director

DATE: February 26, 2018

TO: Religious Exempt Providers

FROM: Charlene Vincent, Director
Division of Licensing – Children’s Programs

SUBJECT: Self Payment of Criminal Background Fees

A process has been developed for any religious exempt facility to self pay for national criminal background checks for their staff and volunteers. This process is ONLY for religious exempt facilities that do not want the Virginia Department of Social Services to pay for their national fingerprint background checks and wish to pay for these background checks themselves.

If you are a religious exempt facility that does not have an issue with VDSS paying for national fingerprint background checks until 9/30/2018 you do not need to do anything. Continue using the codes given to you to process criminal background checks.

If you are a religious exempt facility that does have an issue with VDSS paying for national fingerprint background checks and wants to pay for all national fingerprint background checks themselves, please submit the following to Deborah Eves at deborah.eves@dss.virginia.gov :

- Name of facility as it appears on your exemption letter;
- Address of facility as it appears on your exemption letter;
- The background check contact identifying information as it was submitted to the Office of Background Investigations including phone number and email address; and
- A statement declaring that the facility wants to self pay for national fingerprint background checks and no longer wants VDSS to pay for these background checks beginning as soon as possible.

Once Ms. Eves receives your email and can process your request, new codes will be sent to you which will indicate to Fieldprint that any individuals being sent to Fieldprint to be fingerprinted will need to pay for their own background checks. Facilities may discuss with Fieldprint the criteria and process to be billed.

Again, if you are a religious exempt facility that wants VDSS to continue to pay for all national fingerprint checks for your facility until 9/30/2018 you do not need to do anything.

If you have questions please contact Deborah Eves at Deborah.eves@dss.virginia.gov or at 804-726-7506. If we do not receive an email from your facility we will assume that you are agreeing to the current arrangement where VDSS is paying for the national fingerprint backgrounds. All emails to request self pay must be received no later than 3/13/2018. Ms. Eves will respond back to you if an email is received.