



Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-661
Regulation title	Child Care Program
Action title	Child Care Services Program
Document preparation date	April 14, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This is a joint action to repeal 22 VAC 40-660 and replace it with the new regulation 22 VAC 40-661. The new regulation eliminates obsolete language and replaces that language with current terms and practices. Substantive changes include a new requirement for families to be referred to the Division of Child Support Enforcement, unless there is good cause why this should not be done; clarification of the receipt of child care subsidies for children of family day home owners or operators; clarification of the length of time background checks will be valid; a requirement for child care provider training and new policies on how to handle suspected fraud.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The statutory authority for the Child Care and Development Fund is the Child Care and Development Block Grant of 1990 as amended by the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104-193) and the Balanced Budget Act of 1997 (Public Law 105-33), as implemented in regulation at 45 CFR Parts 98 and 99. Also, authority comes from the Food Stamp Act of 1977, as amended. State authority comes from §§ 63.2-217, 63.2-319, 63.2-510, 63.2-611, and 63.2-616 of the Code of Virginia. The State Board of Social Services has the authority to promulgate this regulation. Many of the provisions are federally mandated.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The new regulation brings the regulation into compliance with state and federal changes. The regulation is updated to support current child care policy and practice, much of which is mandated by the federal government.

The child care program helps protect the safety of vulnerable low-income children while parents work, are in approved education/training, or are receiving protective services by enabling parents to purchase appropriate and safe child care services.

The goal of this regulation is to ensure that the Child Care and Development Fund is administered statewide in a consistent manner which complies with laws and best practices. The Child Care and Development Fund 1) promotes parental choice to enable working parents to make their own decision on the child care that best suits their family's needs, 2) provides consumer education information to help parents make informed child care decisions, 3) provides child care to parents trying to achieve independence from public assistance, 4) assists in implementing health and safety standards related to child care services, and 5) increases the availability, affordability, and quality of child care services for all citizens.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The new regulation eliminates obsolete terminology and policy and replaces them with current information. The new regulation adds a requirement that all recipients of child care subsidy be referred to the Division of Child Support Enforcement, unless there is a good reason why this should not be done. Current policy encourages this, but does not mandate it. The new regulation adds a basis for better handling of suspected child care fraud. This new basis is needed due to the growth of the program, the large amount of funding associated with the program, and the need to better manage fraud when it has been identified. The new regulation defines what is meant by background checks and specifies for how long the background checks

will remain valid. The regulation specifies that children of owners or operators of family day homes are not eligible to receive a subsidy if they are cared for in the home of the owner or operator. The regulation also specifies training requirements for providers who participate in the child care subsidy program.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Citizens in Virginia will benefit from having a child care regulation that reflects current practice mandated by federal and state law. They will benefit from the new requirement for all families to register with the Division of Child Support Enforcement, helping families become more self sufficient through collection of support due. Many families are now on waiting lists for the child care subsidy program due to limitations on funding.

Families will benefit by better handling of suspected fraud, thereby protecting limited funding for eligible families that are abiding by program rules and policies. The regulation assures families that the child care program will be administered with clear and consistent case management policies, including customer legal due process notification.

Providers of child care services will be better served by having the regulation current. It clearly states that all families have full parental choice of all legally operating child care. It assures that providers will be paid based on rates established through a statewide survey. Children will benefit from providers meeting health and safety requirements.

The proposed regulation poses no disadvantages to the public or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>(a) The fund source is the federal Child Care and Development Fund, with matching state and local dollars. This new updated regulation will not cost the state any additional dollars.</p> <p>(b) There are no one-time expenditures, and on-going expenditures are already in place and will not be impacted by updating the regulation. The Division of Child Support Enforcement within the Virginia Department of Social Services will receive more referrals.</p>
<p>Projected cost of the regulation on localities</p>	<p>There is no fiscal impact on localities.</p>

Description of the individuals, businesses or other entities likely to be affected by the regulation	Child care providers, eligible families and children and local DSS agencies are affected by the regulation.
Agency’s best estimate of the number of such entities that will be affected	There are 121 local departments of social services. In fiscal year 2002/2003, 31,190 families were served with subsidy dollars, and 55,497 children were served. These are unduplicated numbers. Many more families, children and providers were impacted by the expenditure of quality funds that help improve child care quality for the whole community. There is no state collected information of the number of child care providers actually receiving subsidy payments, but data shows that approximately 87% of the children receiving subsidy are in regulated care versus unregulated care.
Projected cost of the regulation for affected individuals, businesses, or other entities	None

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.

The alternative is to retain the current regulation as it is. This would result in a regulation that is out of compliance with federal and state law, and is not a viable option.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

There was no public comment.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Families will be better served by having a regulation that reflects current policy and practice. Families will benefit by the new requirement to register with the Division of Child Support Enforcement. Low-income families need all of the financial resources they can obtain, and sole reliance on the child care subsidy program does not provide them with the security and self-sufficiency they need. New policies that deal with suspected fraud will protect those families that are eligible, abide by program rules, and/or may be currently on local child care waiting lists.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-660-10	22 VAC 40-661-10	Section provides definitions.	Obsolete terms are eliminated and replaced with current terms. Terms are updated due to federal and state changes. All references to the AFDC program, JOBS and TRADE programs are eliminated and a definition of TANF (Temporary Assistance to Needy Families) is inserted. Terms no longer used, such as Deprivation, are deleted. Terms such as employment services program, family day home, good cause, and Transitional program are updated. The term "market rate" is changed to "maximum reimbursable rate." The term "background checks" is defined. References to the State Median Income are deleted as the federal poverty level is now used to determine eligibility for income eligible programs.
22 VAC 660-20	22 VAC 661-20	Section briefly defines families and children to be served.	Section is expanded to include the major criteria for child care services: the major reasons for service, financial eligibility, residence, age of children, referral to the Division of Child Support Enforcement (DCSE), and eligibility of children of owners or operators of family day homes. The requirement for clients to be referred to DCSE is new. It is needed so that customers can obtain needed child support to help them become self-sufficient. The current Good Cause section (660-40) is now placed in section 661-20, and an updated definition of good cause is found in the definitions section (661-10).
22 VAC 40-660-30	22 VAC 40-661-30	Section defines the major programs used in the child care subsidy program.	The section updates program terminology required by federal and state changes. The term AFDC is now TANF, and there is a new reference to the TANF capped child. Program definitions for Head Start, the Fee program, and the Food Stamp Employment and Training Program are updated. Former

			limits on the Transitional Program which are obsolete are eliminated
22 VAC 40-660-80 and 100	22 VAC 40-661-40	Section contains obsolete language about the state income scale and fees.	This section describing how families are determined eligible for income eligibility subsidy is updated due to state and federal changes. Income to be counted or disregarded for eligibility determination is specified. The method for determining a co-payment is specified. References to the State Median Income are replaced with references to the federal poverty level, now used to determine eligibility. The section addresses requirements for local agency waiting lists, policies that are currently found in 660-80. Currently references to the state income scale and co-payments are found in 660-100.
22 VAC 40-660-50 and 60 and 80	22 VAC 40-661-50	Section contains obsolete language on parental choice and providers used.	The section is updated to state that parents have full parental choice of all legally operating child care in all the child care programs, due to federal and state changes. Current language indicates a limit on choice for the Block Grant fee program and the updated section corrects this. Currently parental choice is found in 660-80. The section includes health and safety requirements for unregulated providers, currently in 660-60. This section also specifies how long background checks will be valid for providers participating in the child care subsidy program and the training requirements for those providers.
22 VAC 40-660-90 and 100	22 VAC 40-661-60	Section contains obsolete language on payment rates used.	Language in this section is updated to refer to maximum reimbursement rates rather than market rates. They are the same thing, but terms have changed. This clarifying language updates the regulation.
22 VAC-40-660-80	22 VAC 40-661-70	Obsolete language related to case management is eliminated and replaced by current terms and language.	This section eliminates obsolete case management language and inserts current terms and language. The section adds new wording regarding customer due process rights.
None	22 VAC-40-661-80	Fraud is not currently addressed.	The section adds a new basis for fraud identification and how to handle suspected fraud.
22 VAC-40-660-70	22 VAC-40-661-90	Section covers how to handle complaints in the child care setting.	The section makes minor word changes on handling complaints in the child care setting.