



COMMONWEALTH of VIRGINIA

Office of the Attorney General
Richmond 23219

Mark R. Herring
Attorney General

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ERIC J. REYNOLDS 
Assistant Attorney General

DATE: June 5, 2014

SUBJECT: Exempt amendment of 22 VAC40-661-40 (Child Care Subsidy Program)

I am in receipt of the attached regulation regarding the state Child Care Subsidy Program. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulation is adding language and modifying some of the existing language to this Section - 22 VAC 40-661-40 - to replace the 10% provision regarding a families' co-pay obligation with a sliding scale that will determine their copayment based on family size and income. The amended section will clarify the maximum income eligibility limits for assistance. The change to a sliding copayment scale is necessary to bring the program into compliance with federal regulations at 45CFR98.42, which requires that the sliding fee scale be based, at a minimum, on the income and the size of the family.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

It is my view that this regulation is exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at 786-3450.

cc: Kim F. Piner, Esquire
Attachment

DEPARTMENT OF SOCIAL SERVICES

Exempt Action on Child Care Subsidy Regulation

22VAC40-661-40. State income eligible scale and copayments.

A. State income eligible scale. The department establishes the scale for determining financial eligibility for the income eligible child care programs. Income eligibility is determined by measuring the family's income and size against the percentage of the federal poverty guidelines for their locality, not to exceed 250 percent of the federal poverty guidelines and/or 85 percent of the state median income. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except: Supplemental Security Income; TANF benefits; general relief; food stamp benefits; child support paid to another household; earnings of a child under the age of 18 years; garnished wages; earned income tax credit; lump sum child support payments; and scholarships, loans, or grants for education except any portion specified for child care.

Unless a local alternate scale is approved, the income eligibility scale established by the department must be used for the transitional, Head Start and fee programs. Proposed alternate sliding scales must be approved by the department prior to submission to the local board of social services.

B. Copayments. Copayments are established by the department. All families receiving child care subsidy have a copayment responsibility of ~~10% of their countable monthly income or the copayment established by an approved local alternate scale~~ ranging from five to 10 percent of the family's income, taking family size and income into account, except that families whose gross monthly income is at or below the federal poverty guidelines who are recipients of TANF, participants in the FSET program, or families in the Head Start program will have no copayment. The family's co-payment will be calculated using the following chart:

Monthly Income Levels by Percent of Poverty and Household Size

Percent of Poverty	Number of Household Members																				Co-Payment Percentage
	2	3	4	5	6	7	8	9 ¹	10 ¹	11 ¹	12 ¹	13 ¹	14 ¹	15 ¹	16 ¹	17 ¹	18 ¹	19 ¹	20 ¹		
0 - 100%	\$0	\$1,293	\$1,628	\$1,963	\$2,298	\$2,633	\$2,968	\$3,303	\$3,638	\$3,973	\$4,308	\$4,643	\$4,978	\$5,313	\$5,648	\$5,983	\$6,318	\$6,653	\$6,988	\$7,323	5.0%
>100% - <=125%	\$1,294	\$1,629	\$2,035	\$2,454	\$2,872	\$3,291	\$3,710	\$4,129	\$4,547	\$4,966	\$5,385	\$5,804	\$6,222	\$6,641	\$7,060	\$7,479	\$7,897	\$8,316	\$8,735	\$9,154	6.0%
>125% - <=150%	\$1,617	\$2,036	\$2,442	\$2,873	\$3,292	\$3,711	\$4,130	\$4,548	\$4,967	\$5,386	\$5,805	\$6,223	\$6,642	\$7,061	\$7,480	\$7,898	\$8,317	\$8,736	\$9,155	\$9,574	7.0%
>150% - <=160%	\$1,940	\$2,443	\$2,604	\$3,140	\$3,676	\$4,212	\$4,748	\$5,284	\$5,820	\$6,356	\$6,892	\$7,428	\$7,964	\$8,500	\$9,036	\$9,572	\$10,108	\$10,644	\$11,180	\$11,716	8.0%
>160% - <=185%	\$2,069	\$2,605	\$3,011	\$3,677	\$4,213	\$4,749	\$5,285	\$5,821	\$6,357	\$6,893	\$7,429	\$7,965	\$8,501	\$9,037	\$9,573	\$10,109	\$10,645	\$11,181	\$11,717	\$12,253	9.0%
>185% - <=250%	\$2,393	\$3,012	\$4,069	\$4,252	\$4,872	\$5,491	\$6,111	\$6,731	\$7,351	\$7,970	\$8,590	\$9,210	\$9,830	\$10,449	\$11,069	\$11,689	\$12,309	\$12,929	\$13,549	\$14,169	10.0%
100% of Poverty- FFY 2014	\$1,293	\$1,628	\$1,963	\$2,298	\$2,633	\$2,968	\$3,303	\$3,638	\$3,973	\$4,308	\$4,643	\$4,978	\$5,313	\$5,648	\$5,983	\$6,318	\$6,653	\$6,988	\$7,323	\$7,658	
85% of SMI Published on 05/15/13	\$4,340	\$5,361	\$6,383	\$7,404	\$8,425	\$9,446	\$10,467	\$11,488	\$12,509	\$13,530	\$14,551	\$15,572	\$16,593	\$17,614	\$18,635	\$19,656	\$20,677	\$21,698	\$22,719	\$23,740	

¹Income level not to exceed 85% of state median income or 250% of poverty.

Note: Virginia state median income posted in the Federal Register, Vol. 78, No. 94, Wednesday, May 15, 2013 page 25, 597-25,599.

Note: FY 2014 Poverty Guidelines - Federal Register, Vol. 78, No. 16, Thursday, January 24, 2013, page 5, 182-5, 183. For a household greater than 8 add \$4,020 for each additional person.

C. Five-year limit. Localities may limit receipt of fee child care program subsidies to a maximum of 60 months (five years). Receipt of transitional child care does not count toward the five years.

D. Waiting list. Local departments must have a waiting list policy for the fee child care program. Prior receipt of TANF must not be a reason for preferential placement on a waiting list. Proposed policy for a waiting list must be approved by the department prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly.