



COMMONWEALTH of VIRGINIA

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TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ERIC J. REYNOLDS
Assistant Attorney General

DATE: June 25, 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)(1). If you have any questions or need additional information about these regulations, please contact me at 786-3450.

cc: Kim F. Piner, Esquire
Attachment