

## CHILD CARE PROGRAM

CHAPTER 661.CHILD CARE PROGRAM.22 VAC 40-661-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

“Applicant” means a person who has applied for child care services and the disposition of the application has not yet been determined.

“Background checks” means a sworn statement or affirmation as may be required by the Code of Virginia, the Criminal History Record Check, the Sex Offender and Crimes Against Minors Registry Check and the Central Registry Child Protective Services check.

"Child care services" means those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24 hour day. It also means activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

“Child protective services” means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective

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and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

“Child support services” means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents, establish paternity, and establish, modify, enforce, or collect child support, or child and spousal support.

“Children with special needs” means children with documented developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

“Co-payment” means a specific fee that is a portion of a household’s income that is contributed toward the cost of child care.

“Department” means the State Department of Social Services.

“Family” means any individual, adult or adult(s) and/or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.]

“Federal poverty [level guidelines]” means the income levels by family size, determined by the federal Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

“Fee” means a charge for a service and may include, but is not limited to, co-payments, charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

“Fraud” means the knowing employment of deception or suppression of truth in order to receive services one is not entitled to receive.

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"FSET" means Virginia's Food Stamp Employment and Training Program, a multi-component employment and training program that provides Job Search, Job Search Training, Education, Training, and Work Experience to certain Food Stamp recipients.

"Good cause" means a valid reason why a parent in a two parent household, or any other person under Virginia law responsible for the support of the children, cannot provide the needed child care, or a valid reason why a parent will not be required to register with the Division of Child Support Enforcement.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five, pregnant women, and their families (as established by the Head Start Act (42 U.S.C. 9840)).

"Income eligible" means that eligibility for subsidy is based on income and family size.

"In-home" means child care provided in the home of the child and parent when all the children in care reside in the home and the provider does not live in the home.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the state Child Care and Development Fund plan filed with the United States Department of Health and Human Services.

"Non-fraud overpayment" means an overpayment that was caused by the local department, or by an inadvertent household or provider error

"Parent" means the primary adult caretaker or guardian of a child.

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"Resource and referral" means services that provide information to parents to assist them in choosing child care, and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

"Subsidy programs" mean the department programs that assist low income eligible families with the cost of child care, including the TANF child care program and the income eligible child care programs.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy to eligible former TANF recipients after the TANF case closes.

22VAC 40-661-20. Families and children served.

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Child care services are provided to children in eligible families that meet the following criteria:

A. Need for Child Care

1. Families served must have an established need for child care subsidy. In two-parent households there must be good cause why either parent cannot provide the needed child care.

2. Child care can be provided to support:

a. employment,

b. approved education or training, or

c. child protective services.

B. Financial Eligibility

Families served must be financially eligible to receive child care subsidy.

C. Residence

Children served must be legal residents of the United States and must reside in the locality where application is made.

D. Age of Children

Children served must be under age 13, or under the age of 18 if they are physically or mentally incapable of caring for themselves or subject to court supervision.

Child care must not be purchased for children who are eligible to attend public kindergarten or for older children during that portion of a day when appropriate public education is available, unless there are valid and documented reasons the children must be out of school.

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E. [Child support

Where there is an absent person who has responsibility for support of the children, families must be referred to the Division of Child Support Enforcement (DCSE) for child support services, as appropriate. The service worker is responsible for determining good cause why any applicant or recipient parent should not be referred to DCSE. Once referred, it is the parent's responsibility to cooperate with DCSE in order for the local department to approve child care subsidy payments. Non-cooperation is grounds for case closure.

F]. Children of owners or operators of family day homes

A child of an owner or operator of a family day home shall not be eligible to receive a child care subsidy if that child will be cared for in the home of the owner or operator.

22 VAC 40-661-30. Child care programs.

Child care subsidy, to the extent of available funding, is provided through the following programs:

A. TANF Child Care Program.

Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed care for the TANF capped child. These services are also provided to:

1. a child who receives Supplemental Security Income (SSI), if the parent is on the TANF grant and if the child would have been in the TANF assistance unit were it not for the receipt of SSI, or

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2. children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.

B. Income Eligible Child Care Programs

1. Transitional Child Care.

Child care subsidy and services are made available to eligible children of former TANF recipients to support parental employment if the TANF case is closed, and they are found income eligible.

2. Head Start Child Care.

Head Start child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start core hours.

3. Fee Child Care.

Fee child care subsidy and services are made available to children in eligible low income families to the extent of available funding.

C. Food Stamp Child Care.

Child care subsidy and services are made available to children of parents in Virginia's FSET program to allow participation in an approved activity.

22 VAC 40-661-40. State income eligible scale and co-payments.

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

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income and size against the percentage of the federal poverty [level guidelines] for their locality. 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, garnisheed 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. Co-Payments.**

Co-payments are established by the department. All families receiving child care subsidy have a co-payment responsibility of 10 per cent of their [gross countable] monthly income or the co-payment established by an approved local alternate scale except that families whose gross monthly income is at or below the federal poverty level who are recipients of TANF, participants in the FSET program, or families in the Head Start program will have no co-payment.

**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.

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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.

22 VAC 40-661-50. Parental choice [and providers used].

Families who receive subsidy have full parental choice of all legally operating child care.

Agencies must not establish policies that limit parental choice of providers.

[22 VAC 40-661-53. Access to children

A.] Providers used must afford parents unlimited access to their children when they are in care.

[B.] Providers must afford state and local department staff unlimited access to children in care when one or more children in care receive a child care subsidy.

[22 VAC 40-661-57. Provider Requirements

A.] Providers who participate in the subsidy program must be at least 18 years of age, obtain background checks as required by the regulations for their type of child care, and participate in annual training. [Providers and other individuals required to have background checks according to the § 63.2-1725 of the Code of Virginia who are not

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otherwise governed by another state regulation requiring background checks shall obtain background checks as defined in this regulation.

B.] Background checks for regulated child care providers and local department approved child care providers remain valid according to the provisions of the regulations for their type of child care. Background checks for employees of certified preschools or nursery schools and unregulated family day home providers that participate in the child care subsidy program will remain valid for three years as long as the provider provides continuous services under the child care subsidy program. For any other individual who is required to have background checks according to the § 63.2-1725 of the Code of Virginia, the background checks will remain valid for three years as long as the individual maintains continuous employment, residence or volunteer status with that provider.

[C.] Training requirements will consist of current certification in first aid and cardiopulmonary resuscitation (CPR) as appropriate for the age for the children in care, the cost of which will be born by the provider. Four hours of skills training will also be required annually. Skills training is available through the department at a cost of less than \$20.00 per participant.

22 VAC 40-661-60. Determining payment amount.

A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care.

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2. For children with special needs, payment over the maximum reimbursable rate is allowed when this is appropriate as determined by the local department.

3. Providers will be paid up to the maximum reimbursable rate of the jurisdiction in which the provider is located. Local departments must pay the rates and fees providers charge the general public, up to the maximum reimbursable rate, or a negotiated rate that is lower.

4. For out-of-state providers the local department maximum reimbursable rate is used.

5. Parents who choose to place a child in a facility with a rate above the maximum reimbursable rate are responsible for payment of any additional amount, unless the local department elects to pay the additional amount out of local funds.

B. In-Home Care.

For in-home child care, payment must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. Registration Fee.

A single annual registration fee, if charged, will be paid. Transportation fees are paid only when the transportation services are provided by the provider. The total cost of care, excluding the single annual registration fee, but including special programs, other fees and transportation, must not exceed the maximum reimbursable rate and must be identified as one child care cost.

22 VAC 40-661-70. Case management.

A. Application and Assessment.

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Parents who request child care services are required to sign an application and cooperate with an assessment by the local department. Consumer education, including the selection and monitoring of child care, must be provided to parents to assist them in gaining needed information about child care services and availability of providers.

B. Service Planning.

Child care workers must complete a written service plan for each child care case. The service plan outlines the mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

C. Due Process.

Applicants and recipients will be afforded due process through timely written notices of ~~action at the time of case approval, for all significant changes, and at the time of case termination~~ any action deciding or affecting his eligibility for services or co-payment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application].

D. Reassessment.

Local departments will make regular contacts with a member of the case household or the provider. The purpose of these contacts is to evaluate whether the child care services authorized are meeting the needs of the child and the parent.

E. Beginning Date of Service Payment.

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1. The beginning date of service payment is the date the signed application is received in the local department if the family is determined eligible within 45 days.
2. If the determination is made more than 45 days after the signed application is received, services may begin only on the date eligibility is actually determined, except in the case of administrative delay.
3. Administrative delay is when either the parent or provider does not provide needed information for eligibility purposes to the local department within the 45 days due to circumstances beyond their control.
4. Payment cannot be made to licensed providers prior to the effective dates of their initial licenses.

F. Parental Responsibilities.

1. Parents must be informed of their responsibility to report changes that could affect their eligibility. These changes must be reported to the local department within 10 calendar days. Parents must be informed that failure to report required changes may result in case closure, repayment of child care costs, or prosecution for fraud.
2. Parents must be informed of their responsibility to pay all fees owed. Parental failure to pay fees may result in case closure.

G. Termination.

Local department termination of child care services must be planned jointly with the parent and provider. Adequate documentation supporting the reasons for termination must be filed in the case record.

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22 VAC 40-661-80. Fraud.A. Fraud.

[1.] When it is suspected that there has been a deliberate misrepresentation of facts in order to receive services, the local department must determine whether or not fraud was committed. There must be clear and convincing evidence that demonstrates that the household or provider committed or intended to commit fraud. [Suspected instances of child care fraud shall be referred to fraud staff for investigation.]

2. Disqualification

a. Parents will be disqualified from participating in the child care subsidy program for three months upon the first finding of child care fraud, twelve months upon the second finding and permanently upon the third finding.

b. Providers will be permanently disqualified from participating in the child care subsidy program upon the first finding of child care fraud.]

B. Repayment.

In addition to any criminal punishment, anyone who causes the local department to make an improper vendor payment by withholding required information or by providing false information will be required to repay the amount of the improper payment.

C. Non-fraud overpayment.

In cases of non-fraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program[- , as long as a repayment schedule is entered into with the local department and payments are made according to that schedule. If an

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over-payment was made as a result of an error by the local department, the local department will not seek to recoup those funds from the parent or the provider.]

22 VAC 40-661-90. Complaints in the child care setting.

All complaints regarding possible child abuse or neglect occurring in a child care setting must be referred to the child protective services unit at the local department serving the area where the child care service is located. Information regarding the complaint must be shared with the worker responsible for licensure or approval. All other complaints are referred to the approval authority.

[DOCUMENTS INCORPORATED BY REFERENCE

Child Care and Development Fund Plan for FFY 2004-2005, effective October 1, 2003.]

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I certify that this regulation is full, true and correctly dated.

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Julie Christopher, Chair  
State Board of Social Services  
December 15, 2004