



COMMONWEALTH of VIRGINIA


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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: Jennifer C. Williamson 
Senior Assistant Attorney General

DATE: August 29, 2024

SUBJECT: Review of 22 VAC 40-295
Fast Track Amendments to Reference Applicable Virginia Department of
Education Child Care Subsidy Program Guidance Manual Provisions

I am in receipt of and have reviewed the attached regulation for the Temporary Assistance for Needy Families being amended to reference the Virginia Department of Education (VDOE) Child Care Subsidy Program Guidance Manual provisions where applicable. The regulation currently refers to the VDSS Child Day Care Policy Manual. However, Chapters 860 and 861 of the 2020 Acts of Assembly required VDOE to become the lead agency for the Child Care and Development Block Grant by July 1, 2021. Accordingly, amendments referencing the correct manual are necessary.

You have asked the Office of the Attorney General to review this fast-track regulatory action and determine if the State Board of Social Services ("State Board") has the statutory authority to amend the attached regulation and if it comports with applicable state law. Pursuant to Virginia Code § 63.2-217, the State Board is required to adopt regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. The attached regulation comports with applicable state law. Accordingly, it is my opinion the State Board has the authority to amend the attached regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and Executive Order 19, including the Procedures of the Office of Regulatory Management, and that in so doing the State Board does not exceed that authority.

If you have any questions, please feel free to call me at (804) 225-3197.

Attachment

Project 8034 - Fast-Track

Department of Social Services

Amend Temporary Assistance for Needy Families

22VAC40-295-10. Definitions.

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

"Administrative disqualification hearing" or "ADH" means an impartial review by a hearing officer of an individual's actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation.

"Adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

"Affordable child care arrangements" means the cost of the child care is less than or equal to the payment amounts specified in the ~~Virginia Department of Social Services Child Care Services policy (Volume VII, Section II, Chapter D, Revised February 2000)~~ appendices E., F., and G. of the Virginia Department of Education Child Care Subsidy Program Guidance Manual.

"Application" means a request for financial assistance received by the local social services agency in the format prescribed by the Virginia Department of Social Services.

"Appropriate child care" means child care arranged by the participant or, if the participant cannot arrange for the child's care, child care arranged by the local department of social services with a legally-operating provider.

"Assistance unit" means those persons who must participate together as a family unit.

"Board" means the State Board of Social Services.

"Caretaker" means the natural or adoptive parent or other relative with whom the child resides who is responsible for supervision and care of the needy child and is the individual to whom the assistance payment is made.

"Child" means a child who is eligible for TANF and has not attained the age of 18 years, or if regularly attending a secondary school or in the equivalent level of career and technical education, has not attained the age of 19 years and is reasonably expected to complete his senior year of school prior to attaining age 19.

"Department" means the Virginia Department of Social Services.

"Dependent child" means a child living in the home of a parent or relative.

"Determination of eligibility" means the screening procedure to determine the need for assistance and the amount of the monthly assistance payment.

"Disregard" means income that is not considered when determining eligibility for the TANF program.

"Earned income" means income from wages, salary, commissions, or profit from activities in which an individual is engaged as self-employed.

"Emancipated child" means a minor who has been released from parental care and responsibility by court order.

"Former recipient" means an individual whose case has been closed and is not presently receiving an assistance payment through TANF.

"Gross earned and unearned income" means total income before application of any applicable disregards.

"Hearing officer" means an impartial representative of the Department of Social Services to whom requests for hearings are assigned and by whom they are heard. The hearing officer has

been delegated the authority by the Commissioner of the Department of Social Services to conduct and control hearings and to render decisions.

"Income" means all income, both earned and unearned, which is available or expected to be available to the assistance unit.

"Intentional program violation" or "IPV" means any action by an individual for the purpose of establishing or maintaining the family's eligibility for TANF or TANF service or for increasing or preventing a reduction in the amount of the grant which is intentionally a false or misleading statement or misrepresentation, concealment or withholding of facts or any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

"Local agency" means any one of the local departments of social services.

"Lump sum" means money received in the form of a nonrecurring payment that is treated as income in the month of receipt.

"Minor" means any person who is under the age of 18.

"Otherwise eligible" means that the individual is not precluded from eligibility by some provision of law or regulation.

"Overpayment" means an assistance payment or the value of services provided by a local department of social services that is greater than the amount to which the assistance unit is eligible to receive.

"Parent" means a mother or father, married or unmarried, natural or, following entry of an interlocutory order, adoptive.

"Payee" means the person to whom the assistance payment is made payable. In most situations, the caretaker is the payee.

"Protective payee" means an appropriate individual to act for the caretaker in receiving and managing the assistance payment. The protective payee should be someone who is interested and concerned with the welfare of the caretaker and his children.

"Reasonable distance" means that the travel time from the child's home to the child care provider and the work site is generally no more than one hour, based on transportation available to the parent.

"Recipient" means a person whose application for TANF or TANF-UP has been approved and is currently a member of an eligible assistance unit.

"Recoupment" means withholding all or part of an assistance payment to a current assistance unit for the purpose of repaying a prior overpayment.

"Recovery" means a voluntary or court ordered arrangement with a current or former assistance unit for repayment of an overpayment.

"Sanctioned caretaker" means a caretaker whose needs are removed from the grant and who is ineligible for an assistance payment.

"SSN" means social security number.

"Standard of assistance" means the dollar amount, based on the family size, which has been established by the State Board of Social Services to cover predetermined monthly maintenance needs.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Unearned income" means income that is not earned.

"Unsuitability of informal child care" means that the child care arrangement does not meet the requirements for relative care in ~~the Virginia Department of Social Services Child Day Care Services policy~~ Section 5.2.A. of the Virginia Department of Education Child Care Subsidy Program Guidance Manual.

Documents Incorporated by Reference (22VAC40-295)

~~Virginia Department of Social Services Child Care Services Policy, Volume VII, Section II, Chapter D, Revised February 2000.~~ Child Care Subsidy Program Guidance Manual, Section 5.2. A. and appendices E., F., and G., Virginia Department of Education, effective 8/3/2023.