



Notice of Intended Regulatory Action (NOIRA) 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 Subsidy Program
Date this document prepared	June 17, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulatory change will further the Department of Social Service's (DSS) efforts to standardize statewide guidance and implementation for the Child Care Subsidy Program (Program) and to incorporate changes that streamline the Program. Consistent Program implementation will allow implementation of statewide automation. These changes will assure that all clients receive similar services throughout the Commonwealth.

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

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., 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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

DSS needs to standardize and streamline statewide Program guidance in order to provide consistent services throughout the Commonwealth and to move toward statewide automation.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

A change will ensure that applicants for child care subsidy meet the legal age requirement of 18 years to be considered responsible for entering into the contractual arrangement required to receive child care subsidy payments. Applicants must sign a contract stating that they accept parental responsibilities of informing the local department of social services (LDSS) of changes in the household composition and household income. Failure to report such changes causes overpayments which child care clients under the age of 18 cannot legally be required to repay. This regulatory change brings the child care subsidy program into alignment with other public assistance programs by requiring an applicant for subsidy to be of legal age to enter into a contractual arrangement with DSS.

A change will limit the receipt of child care services to five years for each non-TANF family. This limit will permit eligible families with young children to receive child care services through the period in the child's life when the cost of care is the most expensive, thereby helping families as they strive for self-sufficiency. Limiting eligibility to five years per family will permit more eligible families who are on waiting lists to be served.

A change will further clarify and standardize a process whereby parents who fail to meet Program requirements by committing fraud will no longer be eligible for child care services. Federal mandates require expanded child care guidance to include more specific information on improper payments including, steps taken to prevent, measure, identify, reduce, and collect improper payments.

An administrative disqualification process for parents and vendors will standardize procedures for those who do not meet DSS' requirements for participation. This will provide LDSS with a mechanism to deal with fraud, non compliance with processes, and improper payments through an administrative process rather than the current process requiring court proceedings.

A change will shorten the time frame LDSS have to process eligibility applications to 30 days in order to respond more timely to applicants. This time frame brings the Program into alignment with other public assistance programs.

A change will limit the maximum payments of an annual registration fee to a child care provider in order to serve as many families as possible.

A change will eliminate the payment of activity fees for child care in order to serve as many families as possible.

A change will cap subsidy payments for children with special needs in order to bring consistency to such payments and to permit programmatic oversight of costs.

A change will require that overpayments made on behalf of a client as the result of a LDSS error to be repaid by the LDSS.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The alternative would be to continue to have statewide policy guidance and implementation that is not standardized, continue to entertain applications from minors who cannot enter into legally binding contracts, continue to deal with client fraud in the current unspecific manner, and continue to deal with client and vendor problems only through the courts without the alternative mechanism of administrative disqualification hearings. It would also continue to permit families to receive assistance when other financial support is available to their children.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

DSS is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and 3) potential impacts of the regulation. DSS is also seeking information on impacts on small businesses as defined in § 2.2-4007.1. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail to Mary Ward, Office of Early Childhood Development, Virginia Department of Social Services, 7 North 8th Street, Richmond, VA 23129. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DSS is using the participatory approach in the development of this proposal.

In addition to the receipt of written public comments, participation and input will be captured from the Child Care Guidance Advisory Committee, made up of local, regional, and home office staff. The Child Care Subcommittee of the Virginia League of Social Services Executives, a child care provider, and a child care parent recipient, will serve as the Regulatory Advisory Committee for the regulation. Input has already been captured by the Child Care Payment Processes Committee and the Child Care Automation Committee, which includes staff from LDSS.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will assure more timely application processing; limit the receipt of fee based subsidy to five years (not counting any years of receipt of TANF or TANF related subsidy) so that more families on the statewide fee program waiting list can be served; will provide families with clearer policy concerning what fraud is and how improper payments will or will not be collected; and will provide families, as well as vendors, with administrative disqualification hearings processes to resolve fraud and overpayment or underpayment related issues without having to go to court. It will also limit the liability of parents for whom improper payments were made through no fault of their own.