



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	Revise regulation to facilitate statewide automation
Date this document prepared	April 14, 2010

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 action is necessary in order to develop and implement a statewide child care automation system and to expedite the automation process by ensuring uniform statewide child care subsidy guidance. Uniform and consistent alignment of statewide guidance is a critical piece of the development of statewide automation for the Child Care Subsidy Program (Program). It also ensures compliance with state law and federal requirements. Program areas needing alignment include: eligibility, length of time for receipt of subsidized child care, requirements related to the Division of Child Support Enforcement as they relate to the absent parent assisting with child care payments, legal age for contractual arrangements, and a standardized process for the state to recover child care subsidy overpayments to clients as well as vendors.

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 Program is the federal 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 by PL 108-269. 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 (Code). The State Board of Social Services (Board) has the authority to promulgate this regulation.

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.

The Department of Social Services (DSS) needs to standardize and streamline statewide Program guidance in order to accommodate statewide automation, provide consistent subsidized child care services throughout the state, and ensure compliance with state law and federal requirements.

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 subsidized child care meet the legal age requirement to enter into the contract to receive child care subsidy payments.

A change to limit the time families may receive subsidized child care will permit more eligible families who are on a waiting list to be served. A limit to the time families can receive subsidized child care will permit eligible families with young children to receive subsidized child care services during the period in the child's life when the cost of child care is the most expensive, thereby helping families as they strive for self-sufficiency.

A change will permit compliance with Federal mandates which require more specific information on improper child care subsidy payments, including steps taken to prevent, measure, identify, reduce, and collect improper subsidy payments. 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 subsidized child care services.

A change to develop an administrative disqualification process for parents and vendors will standardize and expedite the disqualification process for those who do not meet DSS requirements for participation in the Program.

A change will shorten the time local departments of social services have to process eligibility applications from 45 days to 30 days in order to respond more timely to applicants for subsidized child care. This change brings the Program into alignment with other public assistance programs.

A change will limit the maximum annual registration fee paid by the Program to a child care provider in order to serve as many families as possible.

A change will eliminate the payment of activity fees by the Program 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 local department of social services error will be repaid by the local department of social services.

A change to require cooperation with the Division of Child Support Enforcement as a condition of eligibility to receive subsidized child care will provide children with another means of support.

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 to this regulatory action would be to continue to have statewide guidance and implementation that is not standardized, to continue to entertain applications from minors who cannot enter into legally binding contracts, to continue to deal with client fraud in an unspecific manner, and to continue to deal with client and vendor problems through the courts without an alternative mechanism for dispute resolution. It would also continue to permit families to receive subsidized child care assistance when other financial support is available to their children. Continued inconsistencies will severely limit the Program’s ability to automate effectively.

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 regulatory action. DSS is also seeking information on the impact of this regulatory action 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 regulatory action on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulatory action.

Anyone wishing to submit written comments may do so by mail, email, or fax to Joan Ayers, Division of Child Care and Early Childhood Development, Virginia Department of Social Services, 801 East Main Street, Richmond, Virginia 23129-2901; joan.ayers@dss.virginia.gov; or at fax number (804) 726-7655. 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 DSS home office staff. The Child Care Subcommittee of the Virginia League of Social Services Executives, a child care provider, and a subsidized child care parent recipient will serve as the Regulatory Advisory Committee for this regulatory action. Input has already been received from the Child Care Payment Processes Committee and the Child Care Automation Committee, both of which are composed of staff from DSS and local departments of social services.

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 regulatory action will assist with the development of automation through implementation of consistent Program guidelines statewide. It will also ensure more timely application processing; limit the duration of subsidized child care so that more families on waiting lists can be served; provide families with clear guidance concerning fraud and how improper payments will or will not be collected; and will establish processes for families and vendors to resolve fraud and overpayment or underpayment issues without the necessity of a court action. It will also limit the liability of parents for whom improper payments were made through no fault of their own.