



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 for necessary programmatic changes and implementation of a statewide automation system to support the Child Care Subsidy Program
Date this document prepared	February 16, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

This regulatory action is necessary in order to make modifications to the current Child Care Subsidy Program, to facilitate the development and implementation of a statewide Child Care automation system, and to expedite the automation process by ensuring uniform statewide Child Care guidance. Uniform and consistent alignment of statewide guidance is critical in the development of statewide program automation. Proposed changes include: new requirements for vendors; a limitation on the fees and rates that will be paid by the Program; a requirement that applicants be at least 18 years of age; a requirement for applicants and recipients to cooperate with the Division of Child Support Enforcement as a condition of eligibility; a requirement that appellants refund the cost of services paid during the appeals process if the local department's decision is upheld; a change to the time allowed for processing applications; establishment of a standardized process to hear cases of alleged recipient fraud when the Commonwealth chooses not to prosecute; a time limitation for receipt of Child Care; and a requirement that overpayments made as a result of a local department error be repaid to the Department with local funds.

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 Reconciliation 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 through 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 must standardize and streamline Program guidance in order to provide consistent services throughout the state, to ensure compliance with state and federal requirements, and to accommodate the development of a statewide child care automation system. In addition, other programmatic changes must be made, including changes that will allow the program to serve more families, to establish a process to address intentional program violations when the Commonwealth has chosen not to prosecute, to collect overpayments resulting from errors made by local departments of social services, and to require that persons applying for or receiving subsidy cooperate with the Division of Child Support Enforcement as a condition of eligibility.

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 is proposed to require that all vendors sign and comply with the terms of their vendor agreement, including payment processes, holiday schedules, absence policy, and attendance tracking. This change is necessary in order for vendors to be eligible to participate in the Child Care Subsidy program and to receive payment for their services, and to assure consistent statewide procedures.

A change will require that, in order to participate in the Child Care Subsidy Program, vendors must have a working telephone on site wherever care is provided, in accordance with their signed vendor agreement. This change is necessary for both the health and safety of children and for participation in the new payment process for vendors.

A change is proposed to 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 limit the maximum of one annual registration fee paid per child to a child care vendor. A limitation on payment of registration fees will result in more funding available for payment of direct services in order to serve as many families as possible.

A change is proposed to eliminate the payment of activity fees charged by providers. This change is made in order to serve as many families as possible.

A change is proposed to require that all applicants for Child Care Subsidy be at least 18 years of age. This change is required to ensure that applicants meet the legal age required to enter into the contractual arrangement required in the Child Care Subsidy Program.

A change is proposed to require that all applicants and recipients cooperate with the Division of Child Support Enforcement as a condition of eligibility for the Child Care Subsidy program. Cooperation with the Division of Child Support Enforcement is intended to result in additional support and services for families.

A change is proposed to require that an appellant repay the amount of all Subsidy payments made on behalf of the family during an appeal process if the action of the local department of social services is upheld by a Hearings Officer.

A change is proposed to require that applications for Subsidy be processed within 30 days. This change from 45 days to 30 days will require local departments to respond more timely to applicants and will bring the Child Care Subsidy Program into alignment with other public assistance programs.

A change is proposed to limit receipt of Child Care assistance to 60 months per family. This change will permit eligible families with young children to receive Child Care services through the period in a child's life when the cost of care is the most expensive, thereby helping families as they strive for self-sufficiency.

A change is proposed to develop an Administrative Disqualification Hearing process. An Administrative Disqualification Hearing will be held to hear allegations of an Intentional Program Violation made against a client when the Commonwealth has chosen not to prosecute.

A change will require that overpayments made as a result of a local department of social services error be repaid to the Department with local funds.

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 allow numerous policies and procedures that need to be modified to go unchanged. Without a regulatory change, the Department would be unable to address issues that exacerbate funding limitations, hamper statewide application of vendor requirements, allow minors to enter into contracts, allow applicants and recipients of Child Care to ignore other financial support that may be available, provide no alternative to the court system to deal with allegations of Intentional Program Violations against clients, and severely limit the Program's ability to automate effectively.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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.

The Virginia Department of Social Services 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) the potential impacts of the regulation. The Department is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) a description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so by mail to Mary Ward, Program Manager, Division of Child Care and Early Childhood Development, Virginia Department of Social Services, 801 E. Main Street, Richmond, VA 23129-2901. 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, regulatory advisory panels) 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.

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 Department staff, and the Child Care Subcommittee of the Virginia League of Social Services Executives. Input has already been received from the Division's Child Care Payment Processes Committee and the Child Care Automation Committee, both of which are composed of state and local staff.

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 assure more timely processing of applications, which will result in families receiving needed services in a more timely manner. In addition, the proposed changes will limit the time for receipt of fee based Subsidy assistance so that more families on the waiting list can be served. A change will limit the liability of parents for overpayments made through no fault of their own. This action will assist families through the development of consistent statewide Program guidelines, and enable the development of a statewide automated system which will result in a more efficient service delivery and vendor payment system. The proposed changes will ensure consistent application of policy and procedures governing vendor participation in the Subsidy program.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will not include a review of the entire regulation for small business impact, please delete this entire section.

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This regulation will impact small businesses in several ways. One change proposed will require that vendors have a working telephone at each site where child care is provided. It is imperative that vendors be able to contact parents, doctors and emergency responders, should this be required for the health and safety of a child, and that parents be able to contact providers for the same reasons.

Another impact will involve a change of business responsibilities. At the present time, vendors are approved for program participation by local departments of social services, who also make payments for services provided. A benefit of the proposed change will be that the Department, through a contractor, will be responsible for all aspects of contracting with and payments to vendors. This change will result in clear and consistent statewide application of vendor requirements and procedures, and insure that all individuals understand the terms and conditions of the Memorandum of Agreement they must sign for program participation.

Vendors will be required to maintain either a working telephone or internet services in order to verify a child's attendance at the approved site. Attendance will be verified through the use of either an electronic swipe card or use of a telephonic automated response system. Payments for services will be made by the Department twice a month based on the required validation of a child's attendance.