



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-661
Regulation title(s)	Child Care Program
Action title	Repeal and replace regulation to ensure compliance with Child Care and Development Block Grant Act of 2014
Date this document prepared	10/01/2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

This is a joint action to repeal and replace 22VAC40-661. The regulatory action is necessary to bring state Child Care Subsidy Program requirements into alignment with the federal Child Care and Development Block Grant Act of 2014 (CCDBG). The goals of this action are to broaden the purposes of the program by emphasizing child development, increase the number of children receiving healthy, safe and quality care, and implement family-friendly policies.

Changes to this regulation will strengthen the Child Care Subsidy Program's dual role as both an early childhood development program and a work support program for low-income families. Key changes in the new regulation include but are not limited to supporting and protecting the health and safety of children in care through more consistent standards for child care providers and monitoring of those standards. The changes will also focus on improving the quality of care statewide through increased supports for child care providers, and enabling eligible families to more easily access stable and continuous care.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The State Board of Social Services (Board) has the authority to promulgate this regulatory action. The federal statutory authority for this program is the Child Care and Development Block Grant Act of 2014 (PL 113-186), as implemented in regulation 45 CFR parts 98 and 99. State authority is derived from § § 63.2-217, 63.2-319, 63.2-510, 63.2-611, 63.2-616 and 63.2-1725 of the Code of Virginia.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

This regulatory action is necessary to ensure the state maintains compliance with federal requirements to receive funding for the Child Care Subsidy Program, and to ensure improved program integrity and accountability. Without these changes, Virginia risks losing federal resources which support low-income and vulnerable children and families. The action is essential to continued protection of the health and safety of children in child care programs receiving subsidy. The proposed changes are designed to promote child development, to improve quality and increase the supply of quality child care throughout the state, and to make the Child Care Subsidy Program more family friendly.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory action will make significant changes to the program. It will include critical provisions to ensure the health and safety of children in child care settings, improve the quality of care, and make it easier for families to get and keep child care assistance. Changes to be considered include:

- A change to allow families to be considered to meet all eligibility requirements for assistance, and receive assistance, for not less than 12 months before the state redetermines eligibility, unless the family income exceeds the federal threshold of 85% of State Median Income (SMI), or the family experiences a non-temporary change in participation in work, training, or education activities.
- A change to allow for a three-month job search period prior to termination of assistance for loss of employment, education or training.
- A change to allow for a graduated phase out of care.
- A change to allow for the expedited enrollment of children experiencing homelessness, pending the compilation of certain health and safety documentation.

- A change to require all subsidy providers to receive background checks which meet the requirements of the CCDBG:
 - A search of the State criminal and sex offender registry or repository in the State where the child care staff member resides, and each State where such staff member resided during the preceding 5 years;
 - A search of State-based child abuse and neglect registries and databases in the State where the child care staff member resides, and each State where such staff member resided during the preceding 5 years;
 - A search of the National Crime Information Center;
 - A Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System; and
 - A search of the National Sex Offender Registry.
- A change to require that all subsidy providers receive onsite monitoring.
- A change to create standards for onsite monitoring of unlicensed providers.
- A change to mandate specific department-approved health and safety training, during preservice or orientation periods and ongoing, for all subsidy providers.
- A change to require providers to report instances of death and serious injury in the child care setting to the department.
- A change to allow the state to measure assets of families receiving assistance to ensure no family receiving assistance has assets which exceed \$1,000,000.
- A change regarding group size limits and appropriate child-to-provider ratios based on the age of children in child care.
- A change to the Begin Date of Service Payment rule to change the application date to the date that the completed signed application, including all necessary verifications, is received.
- A change to add and update multiple definitions in the regulation to coincide with other changes

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The only viable alternative to this regulatory action is a legislative mandate which addresses each requirement of the CCDBG. Due to the many changes being considered, the agency plans to repeal the current chapter and replace it with a new regulation, rather than making changes with line amendments.

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. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this

background document or other alternatives, and the potential impacts of the regulation. A panel of will not be used.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

A panel will not be appointed by the agency to assist in the development of this proposal. Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Mary Ward, mailing address: 801 East Main Street, Richmond, VA 23219, phone number: 804-726-7638, fax number: 804-726-7655, and email address: mary.ward@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.