



Final Regulation Agency Background Document

Agency name	Virginia Department of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-661
Regulation title	Child Care Program
Action title	Child Care Services Program
Document preparation date	December 15, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This new regulation outlines the requirements and procedures for the child care subsidy program. This action will repeal 22 VAC 40-660-10 et seq. and adopt 22 VAC 40-661-10 et seq. The new regulation eliminates obsolete language and replaces that language with current terms and practices. Substantive changes include the definition of the family unit, new requirements for training for child care providers in the subsidy program, and new policies on how to handle suspected fraud, including the disqualification of subsidy recipients and providers upon a finding of fraud and repayment of overpayments.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services approved the final action for Child Care Program on December 15, 2004.

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 numbers, 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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The new regulation brings the regulation into compliance with state and federal changes. The regulation is updated to support current child care policy and practice, much of which is mandated by the federal government.

The child care program helps protect the safety of vulnerable children from low-income families while parents work, are in approved education/training, or are receiving protective services by enabling parents to purchase appropriate and safe child care services.

The goal of this regulation is to ensure that the Child Care and Development Fund is administered statewide in a consistent manner which complies with laws and best practices. The Child Care and Development Fund 1) promotes parental choice to enable working parents to make their own decision on the child care that best suits their family's needs, 2) provides consumer education information to help parents make informed child care decisions, 3) provides child care to parents trying to achieve independence from public assistance, 4) assists in implementing health and safety standards related to child care services, and 5) increases the availability, affordability, and quality of child care services for all citizens.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The new regulation eliminates obsolete terminology and policy and replaces them with current information. The new regulation adds a definition of the family unit and a basis for better handling of suspected child care fraud through periods of disqualification for recipients of a child care subsidy, as well as disqualification for child care providers participating in the subsidy program upon a finding of fraud. This new basis is needed due to the growth of the program, the large amount of funding associated with the program, and the need to better manage fraud when it has been identified. This new regulation also provides for the collection of non-fraud overpayments. The new regulation defines what is meant by background checks and specifies for how long the background checks will remain valid. The regulation specifies that children of owners or operators of family day homes are not eligible to receive a subsidy if they are cared for in the home of the owner or operator. The regulation also specifies training requirements for providers who participate in the child care subsidy program.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*
-

Citizens in Virginia will benefit from having a child care regulation that reflects current practice mandated by federal and state law.

Families will benefit by better handling of suspected fraud, thereby protecting limited funding for eligible families that are abiding by program rules and policies. The regulation assures families that the child care program will be administered with clear and consistent case management policies, including customer legal due process notification.

Providers of child care services will be better served by having the regulation current. It clearly states that all families have full parental choice of all legally operating child care. It assures that providers will be paid based on rates established through a statewide survey. Children will benefit from providers meeting health and safety requirements.

The proposed regulation will assure that federal funds received for implementation of the program will be spent according to federal requirements. The proposed regulation poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10 and throughout the regulation	The term “Federal Poverty Level” is defined.	<p>The term is changed to “Federal Poverty Guidelines.”</p> <p>The term “family” was defined.</p>	<p>The term is changed to correctly identify the source of the information. The term is corrected throughout the regulation. This is a technical change for clarity.</p> <p>The family unit was defined to provide clarity regarding whose income will be considered in the determination of eligibility.</p>
40	The second sentence states that a family’s co-payment will be 10 per cent of their gross monthly income.	The term “gross monthly income” is changed to “countable” monthly income.”	The terminology is revised to more accurately reflect how a family’s co-payment is determined. This a technical change for clarity. The change is made in response to public comment.
50	<p>The parent’s right to select a child care provider, the requirement for access to children in care, and provider requirements are combined in one section.</p> <p>Providers who participate in the subsidy program are required to obtain background checks required by regulations for their type of child care.</p>	<p>The parent’s right to select a child care provider, the requirement for access to children in care and provider requirements were separated into three sections: 50, 53, and 57.</p> <p>Providers and other individuals required by the <i>Code of Virginia</i> obtain background checks who are not covered by another regulation are required to obtain background checks outlined in this regulation</p>	<p>The requirements were divided into three separate sections for clarity. These are technical changes made at the request of the Department of Planning and Budget.</p> <p>This is a technical change made to clarify the requirement for background checks for all providers who participate in the child care program.</p>

70	<p>This section specifies case management requirements.</p> <p>Subsection C requires that applicants and recipients receive written notice of action taken at the time of case approval, for all significant changes, and at the time of case termination.</p>	<p>Subsection C is expanded to specify that written notice will be provided of any action deciding or affecting eligibility or co-payments. Language is added to specify what must be included in the written notice.</p>	<p>This change is made to assure that applicants and recipients of child care services receive appropriate due process.</p> <p>This change is made as a result of public comment.</p>
80	<p>The regulation addresses fraud in the child care program.</p> <p>Subsection A requires local departments of social services to determine whether fraud was committed when it is suspected that there has been a deliberate misrepresentation of facts in order to receive services.</p> <p>Subsection C specifies that neither parents nor providers will be disqualified from participation in the subsidy program in cases of non-fraud overpayments.</p>	<p>Subsection A is revised to specify that suspected instances of fraud will be referred to fraud staff for investigation and that a finding of fraud will result in specific periods of ineligibility or disqualification from the program for parents and providers.</p> <p>Subsection C is expanded to specify that continuation in the program is predicated on the establishment of a repayment schedule for non-fraud overpayments and that repayment is made according to that schedule unless the overpayment is a result of a local department error.</p>	<p>Additional language is included to specify the consequences of fraud.</p> <p>This change is made to assure that non-fraud overpayments are repaid if a parent or provider continues to participate in the subsidy program unless the overpayment is a result of a local department error.</p>

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Virginia Poverty Law Center (VPLC), Voices for	The requirement for cooperation with the Division of Child Support Enforcement as a condition of eligibility is a deterrent to a family's	The proposed requirement for registration and cooperation with DCSE has been deleted from the regulation.

<p>Virginia's Children (Voices), Fairfax County Office for Children (Faifax), Virginia Sexual and Domestic Violence Action Alliance (VSDVAA) Local department of social services (LDSS) employee</p>	<p>participation in the child care subsidy program, especially for victims of domestic violence, and should be eliminated.</p> <p>If the requirement is not eliminated the regulation should be revised to define "cooperation" and "good cause" for non-cooperation, provide that the good cause exception be given to applicants, set forth evidence necessary to prove a good cause claim, provide for fair and speedy determination on a good cause claim, and provide an applicant the opportunity to withdrawn their application if a good cause claim is denied.</p> <p>Applicants should be given a grace period for registration with DCSE because some localities do not have a DCSE office.</p> <p>Registration, monitoring and determination of good cause will increase workloads of local DSS employees.</p>	
<p>3 local department of social services employees</p>	<p>Support the regulation for registration with DCSE</p>	
<p>VPLC</p>	<p>The requirement for a co-payment should be eliminated for all families with income below the Federal Poverty Guideline (FPG), not just TANF families.</p>	<p>It is estimated that eliminating the co-payment for all families with income below the FPG would reduce the number of families served due to the increased cost and increase the number of families and children on waiting lists.</p>
<p>VPLC</p>	<p>Co-payments should be reduced to six per cent of the family's income.</p>	<p>Reducing co-payments will increase the cost to the department, thereby decreasing the number of families that can be served and increasing waiting lists. Federal guidelines view the 10 per cent co-payment requirement as an acceptable upper limit for co-payments.</p>
<p>VPLC Voices</p>	<p>Reference to co-payments being calculated as 10 per cent of the family's <u>gross</u> monthly income should be changed to <u>countable</u></p>	<p>The change is appropriate because there is provision for disregarding certain types of income. The change has been made.</p>

<p>VPLC Voices</p>	<p>monthly income.</p> <p>The “child care services unit” should be defined to exclude adults other than parents, stepparents, adoptive parents, or legal guardians (parents) with financial responsibility for children.</p>	<p>The Child Care and Development Fund (CCDF), the federal funding source for the child care program, requires that an eligible child “...reside with a family whose income does not exceed 85 percent of the State’s median income for a family of the same size...” Clarifications from Virginia’s Office of the Attorney General and from the Department of Health and Human Services confirm that the income of adults other than parents must be counted in determining eligibility for services.</p>
<p>VPLC Fairfax</p>	<p>The prohibition against giving preference to former TANF recipients on waiting lists should be eliminated.</p>	<p>Employed TANF recipients receive priority while they receive TANF benefits and for one year after the close of the TANF case. Continuing to give TANF families priority over other low income families will delay services to families with similar incomes.</p>
<p>Voices</p>	<p>The regulation should require local departments of social services to use the department’s automated wait list screening and tracking system.</p>	<p>This is an internal operating procedure that is already in place. Adding the requirement to the regulation could delay the department’s ability to enhance automated services in the future.</p>
<p>One LDSS employee</p>	<p>The three year time limit on the validity of criminal records checks should be eliminated. Monitoring compliance will increase the burden on local departments, and children may have contact with the providers, such as grandparents, in any event.</p>	<p>The <i>Code of Virginia</i> requires criminal background checks for child care providers. The three year limit on the validity of the background checks is instituted to more closely align the providers in the child care program with requirements for licensed child care providers.</p>
<p>One LDSS employee</p>	<p>The requirement for certification in Cardiopulmonary Resuscitation (CPR), First Aid and skills training should be eliminated due to cost.</p>	<p>The requirement for CPR and First Aid training provide basic safeguards for children in care. The requirement for skills training is capped at four hours per year and is available through the Department at a cost of \$20.00 or less per year.</p>
<p>Fairfax</p>	<p>Head Start eligibility guidelines should be used when determining eligibility for the Head Start Wrap Around program.</p>	<p>Funding for wrap-around child care services for Head Start families is provided to all eligible Head Start families. As part of the income based child care program, initial eligibly guidelines for that program apply to all families.</p>
<p>One department employee</p>	<p>The regulation should require that care be provided in a smoke free environment.</p>	<p>Parents may elect to have care provided in their own homes and they may permit smoking in their homes.</p>
<p>VPLC Voices</p>	<p>The regulation on due process should be expanded.</p>	<p>The regulation covering due process for applicants and recipients has been expanded.</p>

--	--	--

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-660-10	22 VAC 40-661-10	Section provides definitions.	<p>Obsolete terms are eliminated and replaced with current terms. Terms are updated due to federal and state changes. All references to the AFDC program, JOBS and TRADE programs are eliminated, and a definition of TANF (Temporary Assistance to Needy Families) is inserted. Terms no longer used, such as Deprivation, are deleted. Terms such as employment services program, family day home, good cause, and Transitional program are updated. The term “market rate” is changed to “maximum reimbursable rate.”</p> <p>The terms “background checks” and “family” are defined. References to the State Median Income are deleted as the federal poverty level is now used to determine eligibility for income eligible programs.</p>
22 VAC 660-20, 30, and 40	22 VAC 661-20	Sections briefly defines families and children to be served.	Section is expanded to include the major criteria for child care services: the major reasons for service, financial eligibility, residence, age of children, and eligibility of children of owners or operators of family day homes.
22 VAC 40-660-30	22 VAC 40-661-30	Section defines the major programs used in the child care subsidy program.	The section updates program terminology required by federal and state changes. The term AFDC is now TANF, and there is a new reference to the TANF capped child. Program definitions for Head Start, the Fee program, and the Food Stamp Employment and Training Program are updated. Former limits on the Transitional Program, which are obsolete, are eliminated.

22 VAC 40-660-80 and 100	22 VAC 40-661-40	Section contains obsolete language about the state income scale and fees.	This section describing how families are determined eligible for income eligibility subsidy is updated due to state and federal changes. Income to be counted or disregarded for eligibility determination is specified. The method for determining a co-payment is specified. References to the State Median Income are replaced with references to the federal poverty level, now used to determine eligibility. The section addresses requirements for local agency waiting lists, policies that are currently found in 660-80. Currently references to the state income scale and co-payments are found in 660-100.
22 VAC 40-660-50 and 60 and 80	22 VAC 40-661-50	Sections contain obsolete language on parental choice, providers used, and parental access to their children when they are in care.	The section is updated to state that parents have full parental choice of all legally operating child care in all the child care programs, due to federal and state changes. Parental access to their children is moved to 661-60. Provider requirements are moved to 661-70.
22 VAC 40-660-80	22 VAC 40-661-53	Section provides for parental access to their children when they are in care.	Parental access to their children when they are in care is moved to this section. The section also provides state and local department employees unlimited access to children in care when one or more children in care receive a child care subsidy.
22 VAC 40-660-50, 60 and 80	22 VAC 40-661-57	Sections include requirements for providers that can participate in the child care program.	Section requires that providers must be 18 years of age, obtain background checks, obtain certification in CPR and first aid, and obtain annual skills training. The section also specifies how long background checks will remain valid.
22 VAC 40-660-90 and 100	22 VAC 40-661-60	Section contains obsolete language on payment rates used.	Language in this section is updated to refer to maximum reimbursement rates rather than market rates. They are the same thing, but terms have changed. This clarifying language updates the regulation.
22 VAC-40-660-80	22 VAC 40-661-70	Obsolete language related to case management is eliminated and replaced by current terms and language.	This section eliminates obsolete case management language and inserts current terms and language. The section adds new wording regarding customer due process rights.
None	22 VAC-40-661-80	Fraud is not currently addressed.	The section adds a new basis for fraud identification and how to handle suspected fraud. The section also specifies how non-fraud overpayments will be handled.
22 VAC-40-660-70	22 VAC-40-661-90	Section covers how to handle complaints in the child care setting.	The section makes minor word changes on handling complaints in the child care setting.

Enter any other statement here

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Families will be better served by having a regulation that reflects current policy and practice. Low-income families will be assisted in obtaining financial resources to permit them to obtain child care services while they work, obtain education or training, or to assist them if they have Child Protective Services needs. New regulations that deal with suspected fraud will assure that families who receive child care services are eligible or will repay assistance obtained through fraudulent means.