

## Project 7208 - Final

### State Board of Education

#### Changes to the Child Care Subsidy Program regulations to comply with FY 2023-2024 budget

##### **8VAC20-790-20. Families and children to be served.**

A. For an applicant to be eligible for child care subsidy and services, the applicant must have a child who, at the time of eligibility determination or redetermination:

1. Is younger than 13 years of age or is younger than the age of 18 years and physically or mentally unable to care for himself, or under court supervision;
2. Is a citizen or legal resident of the United States;
3. Is immunized according to requirements of the State Board of Health; however, families of a child experiencing homelessness that cannot provide documentation of their child's immunizations may be conditionally approved for services for a period not to exceed 90 days;
4. Is not eligible to attend public school during the part of the day when public education is available unless there is a documented reason for the child to be out of school;
5. Resides with the applicant or recipient for services;
6. Resides in the locality where application or redetermination for services is made;
7. Resides with a family whose income does not exceed the income limits established by the department in the current Child Care and Development Fund Plan for Virginia approved by the U.S. Department of Health and Human Services;
8. Resides with a family whose family assets do not exceed \$1 million in value, as certified by the applicant; and
9. Resides with a family in which there is a need for child care services, arising from one of the following situations:
  - a. In a two-parent household, there must be a documented reason why one of the parents cannot provide the needed child care.
  - b. Parents who need child care to support the following approved activities:
    - (1) Employment **or employment search**;
    - (2) Education or training leading to employment;
    - (3) Child protective services; or
    - (4) Assigned VIEW or SNAPET activity.

B. At the option of the local department, a child born to a family 10 months or more after the initial date of approval for the Fee Program may receive child care services or be placed on the local department waiting list.

C. A child of an owner or operator of a family day home shall not be eligible to receive a child care subsidy if that child will be cared for in the home of the owner or operator.

##### **8VAC20-790-40. Case management.**

A. Applicants for child care subsidy and services must be at least 18 years of age unless they are an emancipated minor.

B. Applicants are required to sign an application, to provide verification of identity, and to cooperate with an assessment by the local department of social services.

C. At initial eligibility determination, a family with a child experiencing homelessness that cannot provide the required documentation may be conditionally approved for services for a period not to exceed 90 days. The final eligibility determination shall be completed once the 90 days has expired or full documentation is provided. Any payments made prior to the final eligibility determination shall not be considered an error or improper payment. Families with a child experiencing homelessness shall receive priority placement on the waiting list, if applicable.

D. Consumer education, including education on the selection and monitoring of quality child care and how to access information regarding their selected vendor as to the (i) health and safety requirements met by the vendor; (ii) licensing or regulatory requirements met by the vendor; (iii) date the vendor was last inspected and any history of violations; and (iv) any voluntary quality standards met by the vendor, must be provided to parents to assist them in gaining needed information about the availability of child care services and providers. Parents must also be provided information on how to obtain a developmental screening for their child.

E. The department shall establish scales for determining financial eligibility for the income eligible child care subsidy program categories in subdivision 2 of 8VAC20-790-30.

1. Recipients in the TANF child care program category shall be considered income eligible based on their receipt of TANF; the local department shall not be required to verify their income.

2. At initial eligibility determination, income eligibility shall be determined by measuring the family's countable income and size against the percentage of the federal poverty guidelines for their locality. The family's income cannot exceed 85% of the state median income.

3. At redetermination, if a recipient family's countable income exceeds the initial eligibility limit, they shall be considered income eligible until their countable income meets or exceeds the exit eligibility limit established by the department. The family's income cannot exceed 85% of the state median income.

F. Families receiving child care subsidy and services shall be required to pay a copayment unless their gross monthly income is at or below the federal poverty guidelines ~~and they are recipients of TANF, participants in the SNAPET program, or families where all children participate in the Head Start program~~. The copayment amount will be based on a scale set out in the current Child Care and Development Fund Plan for Virginia. Copayments may be increased at redetermination and during graduated phase out if the family's countable income exceeds the initial eligibility limit but is below the exit eligibility limit. Local departments shall be required to act on changes reported by the family that would reduce the family's copayment during the 12-month eligibility period.

G. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except the following:

1. Supplemental Security Income;
2. TANF benefits;
3. Transitional payments of \$50 per month to former VIEW participants;
4. Diversionary assistance payments;
5. General relief;
6. SNAP benefits;
7. Value of U.S. Department of Agriculture donated food;
8. Benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965;

9. Value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act;
10. Earnings of a child younger than the age of 18 years;
11. Earned income tax credit;
12. Lump sum child support arrears payments;
13. Scholarships, loans, or grants for education except any portion specified for child care;
14. Basic allowance for housing for military personnel living on base;
15. Clothing maintenance allowance for military personnel;
16. Payments received by AmeriCorps volunteers;
17. Tax refunds;
18. Lump sum insurance payments;
19. Monetary gifts for one-time occasions or normal annual occasions;
20. Payments made by non-financially responsible third parties for household obligations, unless payment is made in lieu of wages;
21. Loans or money borrowed;
22. Money received from sale of property;
23. Earnings less than \$25 a month;
24. Capital gains;
25. Withdrawals of bank deposits;
26. GI Bill benefits;
27. Reimbursements, such as for mileage;
28. Foreign government restitution payments to Holocaust survivors;
29. Payments from the Agent Orange Settlement Fund or any other fund established for settlement of Agent Orange product liability litigation; and
30. Monetary benefits provided to the children of Vietnam Veterans as described in 38 USC § 1823(c).

The amount of wages subject to garnishment and the amount of child support paid to another household shall be deducted from the family's income.

H. The eligibility period for TANF (nonVIEW), transitional child care, Fee Program, and Head Start begins with the effective date of the approval of the child care subsidy and services application. The eligibility period for VIEW and SNAPET participants begins with the date of referral from the VIEW or SNAPET program.

I. Recipients will be eligible for child care subsidy and services for a minimum of 12-months before eligibility is redetermined unless:

1. Their countable income exceeds 85% of state median income. Temporary increases in income will not affect eligibility or family copayments, including monthly income fluctuations, which when taken in isolation, may incorrectly indicate that a recipient's income exceeds 85% of state median income.
2. There is a finding that the recipient committed an intentional program violation.
3. The recipient is no longer a resident of Virginia.
4. The recipient requests that their child care subsidy and services case be closed.
5. The recipient is a family of a child experiencing homelessness that was approved as conditionally eligible and failed to provide necessary documentation to the local

department within 90 days, or the recipient is determined ineligible after full documentation is provided.

J. Recipients will retain eligibility despite any change in residency within the state.

K. Recipients will retain eligibility despite any eligible child turning 13 years of age during the 12-month eligibility period.

L. The beginning date of service payment for TANF (nonVIEW), transitional child care, Fee Program, and Head Start participants may begin with the date the applicant is determined eligible and a vendor approved by the department is selected. The beginning date of service payment for VIEW or SNAPET participants may begin with the date of referral from the VIEW or SNAPET program if the applicant is determined eligible and a vendor approved by the department is selected.

1. Eligibility must be determined within 30 days of receipt of a signed application or referral from VIEW or SNAPET by the local department.

2. Payment cannot be made to any provider prior to the effective date of their approval by the department as a vendor.

M. Eligibility will be redetermined in the final month of the 12-month eligibility period described in subsection I of this section, at which time the recipient will be contacted in order to have all eligibility criteria be reevaluated. The local department's contact with the recipient should not unduly disrupt a parent's work schedule. Recipients shall not be required to appear in person for eligibility redetermination.

N. Child care case managers shall prepare a written service plan for each child care case with the applicant or recipient. The service plan shall state the activities and responsibilities of the local department and the parent in the provision of child care services. The VIEW Activity and Service Plan will serve as the service plan for parents active in VIEW. If the parents are SNAPET participants, the SNAPET Plan of Participation will serve as the service plan.

O. Recipients shall be required to:

1. Report to the local department the following changes within 10 calendar days of the change:

- a. Countable income that exceeds 85% of the state median income.

- b. Recipient is no longer a resident of Virginia or the county in which they are receiving services.

2. Pay all fees owed to the vendor not paid for under the Child Care Subsidy Program or reimbursements owed to the local department; failure to do so may result in case closure at redetermination.

3. Reimburse the local department for any overpayment made as a result of fraud, intentional program violation, or an inadvertent household error.

The local department shall inform recipients of child care subsidy and services of these responsibilities.

P. Adequate documentation supporting the reasons for termination must be filed in the case record. ~~Eligibility in the Fee Program is limited to a total of 72 months per family. Receipt of assistance in any other program category does not count toward the 72-month limitation.~~

Q. When sufficient funds are not available, local departments of social services must screen applicants for potential eligibility and place them on the department's waiting list unless the family declines placement.

R. Applicants and recipients will be afforded due process through timely written notices of any action determining or affecting their eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures,

including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a recipient requests an appeal prior to the effective date of any proposed action and if the continuation of services is requested by the parent, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the recipient must repay the amount of services paid during the appeal process.

#### **8VAC20-790-80. Determining payment amount.**

##### A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care, level of regulatory oversight, age of child, and unit of service. Such rates shall be available in Appendices F and G of the Child Care Subsidy Program Guidance Manual on the department's website.
2. For children with special needs or disability, payment over the maximum reimbursable rate is allowed when this is appropriate as determined and documented by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the rate for care of children who do not have special needs.
3. Vendors will be paid for the amount of care approved up to the maximum reimbursable rate of the locality in which the vendor is located. The department will pay the rates providers charge the general public, up to the maximum reimbursable rate. Level two vendors will be paid a higher maximum reimbursable rate established by the department.
4. Parents who choose a vendor that charges a rate higher than the maximum reimbursable rate set by the department shall be responsible for payment of the additional amount, if charged by the vendor, unless the local department elects to pay the additional amount out of local funds.

B. For in-home child care, the payment rate must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. A single annual registration fee, if charged, will be paid to level two vendors only. The registration fee must not exceed \$100 nor be higher than the fee the vendor charges the general public. If the requirement for payment of another registration fee is beyond the control of the recipient or due to extenuating circumstances, an additional registration fee may be paid. The cost of transportation services provided by the vendor, if any, shall be included in the total cost of care. The total cost of care, excluding the single annual registration fee but including other fees and transportation, must not exceed the maximum reimbursable rate.

D. ~~Level two providers~~ Providers may be paid up to ~~10~~ 15 days of planned closure for holidays, vacations, and professional development or planning time on which no child care services are provided as identified in the vendor agreement. ~~Certified preschools, religious exempt centers, and voluntary registered family day homes that are classified as level one providers may be paid for holidays on which no child care services are provided in accordance with the provisions of the vendor agreement. All other level one providers will not receive payment for any holiday unless services are provided on such day.~~

E. ~~Level two providers may be paid for up to 36 days the child is absent per fiscal year~~ The department shall issue payments to Child Care Subsidy Program vendors for authorized enrollment, subject to the attendance threshold established by the department.

F. Family day home providers in the Child Care Subsidy program may be paid for up to three sick days to care for themselves or a family member.

G. Child Care Subsidy vendor payment rates for infants and toddlers shall fully reflect the cost of care.