




# COMMONWEALTH of VIRGINIA

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**TO:** MARGARET SCHULTZE, Commissioner  
Virginia Department of Social Services

**FROM:** ERIC J. REYNOLDS   
Assistant Attorney General

**DATE:** November 17, 2017

**SUBJECT:** 22 VAC40-661 – Appeal and Replace Child Care Subsidy Program regulation

I am in receipt of the attached regulation regarding the state Child Care Subsidy Program. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This proposed regulation repeals 22VAC40-661 and replaces it with 22VAC40-665 to govern Virginia's Child Care Program. The proposed regulation is necessary to bring the Child Care Subsidy Program requirements into alignment with the federal Child Care and Development Block Grant Act of 2014 (CCDBG) and new federal regulations for the CCDBG.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act, §§ 2.2-4006 *et seq.* of the Code of Virginia ("APA") and has not exceeded that authority.

It is my view that this regulation is not exempt from but is subject to the procedures of Article 2 of the APA. If you have any questions or need additional information about these regulations, please contact me at (804) 786-3450.

cc: Kim F. Piner, Esquire  
Attachment



Logged in as  
Eric J. Reynolds

## Proposed Text

**Action:** Repeal and replace regulation to ensure compliance with Child ...

**Stage:** Proposed

10/31/17 4:26 PM [latest] ▼

CHAPTER 661

CHILD CARE PROGRAM (REPEALED)

### 22VAC40-661-10. Definitions: (Repealed.)

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

"ADH" means an administrative disqualification hearing, an impartial review by a state hearing officer of a recipient's actions involving an alleged intentional program violation for the purpose of determining if the individual did or did not commit an intentional program violation.

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Background checks" means a sworn statement or affirmation as may be required by the Code of Virginia, the Criminal History Record Check, the Sex Offender and Crimes Against Minors Registry Check, and the Central Registry Child Protective Services check.

"Child care services" means those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also means activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents, establish paternity, and establish, modify, enforce, collect, and disburse child support, or child and spousal support.

"Children with special needs" means children with documented developmental disabilities, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cooperate with the Division of Child Support Enforcement" means that an applicant or recipient of child care subsidy services must provide the information required by the Division of Child Support Enforcement to locate an absent parent, establish paternity, or establish a support order, unless a basis for good cause for noncooperation is determined by the program.

"Copayment" means a specific fee that is a portion of a household's income that is contributed toward the cost of child care.

"DCSE" means the Division of Child Support Enforcement, the division of the Department of Social Services responsible for locating absent parents; establishing paternity; and establishing, modifying, enforcing, collecting, and disbursing child support, or child and spousal support.

"Department" means the State Department of Social Services.

"Family" means any individual, adult, or adults and/or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.

"Federal poverty guidelines" means the income levels by family size, determined by the federal Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include, but is not limited to, copayments, charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

"Fee program" means a category in the child care subsidy program that assists low income, non-TANF families with child care services.

"Fraud" means the knowing employment of deception or suppression of truth in order to receive benefits or services one is not entitled to receive.

"Good cause" means a valid reason why a parent in a two-parent household cannot provide the needed child care or a valid reason why a parent will not be required to register with the Division of Child Support Enforcement.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five, pregnant women, and their families (as established by the Head Start Act (42 USC § 9840)).

"Income eligible" means that eligibility for subsidy is based on income and family size.

"In-home" means child care provided in the home of the child and parent when all the children in care reside in the home and the provider does not live in the home.

"Intentional program violation" means fraudulent action by a recipient for the purpose of establishing or maintaining the family's eligibility for child care subsidy, increasing or preventing a reduction in the amount of the subsidy, or causing an improper payment to be made by intentionally giving false or misleading information.

"Level one provider" means a child care provider that is unlicensed or unregulated.

"Level two provider" means a child care provider that is licensed by the Department of Social Services, approved by the Department of Education, approved by a licensed family day system, approved under local ordinance according to § 15.2-914 of the Code of Virginia, or federally approved.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the Child Care and Development Fund Plan for Virginia, FFY 2014-2015, effective October 1, 2013, filed with the U.S. Department of Health and Human Services.

"Noncooperation with DCSE" means failure of an applicant or recipient to provide the local department or the Division of Child Support Enforcement with information required to establish paternity or an order for child support, without good cause.

"Nonfraud overpayment" means an overpayment that was caused by the local department, or by an inadvertent household or provider error.

"Parent" means the adult or emancipated minor (as defined in § 16.1-334 of the Code of Virginia) who acts as the primary caretaker or guardian of a child.

"Provider" means a person, entity, or organization providing child care services.

"Resource and referral" means services that provide information to parents to assist them in choosing child care, and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

"SNAP" means the Supplemental Nutrition Assistance Program, a program administered by the U.S. Department of Agriculture to reduce hunger and increase food security.

"SNAPET" means Supplemental Nutrition Assistance Program Employment and Training, which provides job search, job search training, education, training, and work experience to nonpublic assistance SNAP recipients.

"Subsidy program" means the department program that assists low-income eligible families with the cost of child care.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy to eligible former TANF recipients after the TANF case closes.

#### **22VAC40-661-20. Families and children served. (Repealed.)**

Child care services are provided to children in eligible families that meet the following criteria:

4. Need for child care:

a. Families served must have an established need for child care subsidy. In two-parent households there must be good cause why either parent cannot provide the needed child care.

b. Child care can be provided to support:

(1) Employment;

(2) Approved education or training; or

(3) Child protective services.

2. Financial eligibility. Families served must be financially eligible to receive child care subsidy.

3. Residence. Children served must be legal residents of the United States and must reside in the locality where application is made.

4. Age of children. Children served must be under age 13, or under the age of 18 if they are physically or mentally incapable of caring for themselves or subject to court supervision. Child care must not be purchased for children who are eligible to attend public kindergarten or for older children during that portion of a day when appropriate public education is available, unless there are valid and documented reasons the children must be out of school.

5. Children of owners or operators of family day homes. 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.

#### **22VAC40-661-30. Child care programs. (Repealed.)**

Child care subsidy, to the extent of available funding, is provided through the following programs:

1. TANF Child Care Program. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed care for the TANF capped child. These services are also provided to:

a. A child who receives Supplemental Security Income (SSI), if the parent is on the TANF grant and if the child would have been in the TANF assistance unit were it not for the receipt of SSI; or

b. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.

2. Income eligible child care programs:

a. Transitional child care. Child care subsidy and services are made available to eligible children of former TANF recipients to support parental employment if the TANF case is closed, and they are found income eligible.

b. Head Start child care. Head Start child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start core hours.

e. Fee child care. Fee child care subsidy and services are made available to children in eligible low income families who are not receiving TANF, not in the Head Start Program, and who meet the eligibility criteria for child care, to the extent funding is available.

3. SNAP child care. Child care subsidy and services are made available to children of parents in Virginia's SNAPET program to allow participation in an approved activity.

#### **22VAC40-661-40. State income eligible scale and copayments. (Repealed.)**

A. State income eligible scale. The department establishes the scale for determining financial eligibility for the income eligible child care programs. Income eligibility is determined by measuring the family's income and size against the percentage of the federal poverty guidelines for their locality not to exceed 85% of the state median income. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except certain disregarded income: Supplemental Security Income; TANF benefits, including TANF match payments; transitional payments of \$50 per month to former VIEW participants; diversionary assistance payments; general relief; SNAP benefits; value of USDA donated food; benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965; value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act; child support paid to another household; earnings of a child under the age of 18 years; garnished wages; earned income tax credit; lump sum child support payments, scholarships, loans, or grants for education except any portion specified for child care; basic allowance for housing for military personnel living on base; clothing maintenance allowance for military personnel; payment to AmeriCorps volunteers; tax refunds; lump sum insurance payments; monetary gifts for one-time occasions or normal annual occasions; payments made by nonfinancially responsible third parties for household obligations, unless payment is made in lieu of wages; loans or money borrowed; money received from sale of property; earnings less than \$25 a month; capital gains; withdrawals of bank deposits; GI Bill benefits; reimbursement, such as for mileage; foreign government restitution payments to Holocaust survivors; payments from the Agent Orange Settlement Fund or any other fund established for settlement of agent orange product liability litigation; and monetary benefits provided to the children of Vietnam Veterans as described in 38 USC § 1823(e).

B. Copayments. Copayments are established by the department. All families receiving child care subsidy have a copayment responsibility ranging from 5.0% to 10% of the family's income, taking family size and income into account, except that families whose gross monthly income is at or below the federal poverty guidelines who are recipients of TANF, participants in the SNAPET program, or families in the Head Start program will have no copayment. The family's copayment will be calculated using the following chart:

Monthly Income Levels by Percent of Poverty and Household Size																					
Percent of Poverty	Number of Household Members																			Copayment Percentage	
	2	3	4	5	6	7	8	9 <sup>1</sup>	10 <sup>1</sup>	11 <sup>1</sup>	12 <sup>1</sup>	13 <sup>1</sup>	14 <sup>1</sup>	15 <sup>1</sup>	16 <sup>1</sup>	17 <sup>1</sup>	18 <sup>1</sup>	19 <sup>1</sup>	20 <sup>1</sup>		
0-100%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	5.0%
	\$1,293	\$1,628	\$1,963	\$2,298	\$2,633	\$2,968	\$3,303	\$3,638	\$3,973	\$4,308	\$4,643	\$4,978	\$5,313	\$5,648	\$5,983	\$6,318	\$6,653	\$6,988	\$7,323		
>100% -<=125%	\$1,294	\$1,629	\$1,964	\$2,299	\$2,634	\$2,969	\$3,304	\$3,639	\$3,974	\$4,309	\$4,644	\$4,979	\$5,314	\$5,649	\$5,984	\$6,319	\$6,654	\$6,989	\$7,324	6.0%	
	\$1,616	\$2,035	\$2,454	\$2,872	\$3,291	\$3,710	\$4,129	\$4,547	\$4,966	\$5,385	\$5,804	\$6,222	\$6,641	\$7,060	\$7,479	\$7,897	\$8,316	\$8,735	\$9,154		
>125% -<=150%	\$1,617	\$2,036	\$2,455	\$2,873	\$3,292	\$3,711	\$4,130	\$4,548	\$4,967	\$5,386	\$5,805	\$6,223	\$6,642	\$7,061	\$7,480	\$7,898	\$8,317	\$8,736	\$9,155	7.0%	
	\$1,939	\$2,442	\$2,944	\$3,447	\$3,949	\$4,452	\$4,954	\$5,457	\$5,959	\$6,462	\$6,964	\$7,467	\$7,969	\$8,472	\$8,974	\$9,477	\$9,979	\$10,482	\$10,984		
>150% -<=160%	\$1,940	\$2,443	\$2,945	\$3,448	\$3,950	\$4,453	\$4,955	\$5,458	\$5,960	\$6,463	\$6,965	\$7,468	\$7,970	\$8,473	\$8,975	\$9,478	\$9,980	\$10,483	\$10,985	8.0%	
	\$2,068	\$2,604	\$3,140	\$3,676	\$4,212	\$4,748	\$5,284	\$5,820	\$6,356	\$6,892	\$7,428	\$7,964	\$8,500	\$9,036	\$9,572	\$10,108	\$10,644	\$10,914	\$11,106		
>160% -<=185%	\$2,069	\$2,605	\$3,141	\$3,677	\$4,213	\$4,749	\$5,285	\$5,821	\$6,357	\$6,893	\$7,429	\$7,965	\$8,501	\$9,037	\$9,573	\$10,109	\$10,645	\$10,914	\$11,106	9.0%	
	\$2,392	\$3,011	\$3,631	\$4,251	\$4,871	\$5,490	\$6,110	\$6,730	\$7,350	\$7,969	\$8,589	\$9,209	\$9,829	\$10,449	\$10,340	\$10,531	\$10,723	\$10,914	\$11,106		
>185% -<=250%	\$2,393	\$3,012	\$3,632	\$4,252	\$4,872	\$5,491	\$6,111	\$6,731	\$7,351	\$7,970	\$8,590	\$9,210	\$9,830	\$10,450	\$10,340	\$10,531	\$10,723	\$10,914	\$11,106	10%	
	\$3,232	\$4,069	\$4,907	\$5,744	\$6,582	\$7,419	\$8,257	\$9,095	\$9,933	\$10,771	\$11,609	\$12,447	\$13,285	\$14,123	\$14,961	\$15,799	\$16,637	\$17,475	\$18,313		
100% of Poverty-FY 2014	\$1,293	\$1,628	\$1,963	\$2,298	\$2,633	\$2,968	\$3,303	\$3,638	\$3,973	\$4,308	\$4,643	\$4,978	\$5,313	\$5,648	\$5,983	\$6,318	\$6,653	\$6,988	\$7,323		
86% of SMI Published on 05/15/13	\$4,340	\$5,361	\$6,383	\$7,404	\$8,425	\$9,446	\$10,467	\$11,488	\$12,509	\$13,530	\$14,551	\$15,572	\$16,593	\$17,614	\$18,635	\$19,656	\$20,677	\$21,698	\$22,719		

<sup>1</sup>Income level not to exceed 85% of state median income or 250% of poverty.  
 Note: Virginia state median income posted in the Federal Register, Vol. 78, No. 94, Wednesday, May 15, 2013, pages 28597-28599.  
 Note: FY 2014 Poverty Guidelines - Federal Register, Vol. 78, No. 16, Thursday, January 24, 2013, pages 5182-5183. For a household greater than 8, add \$4,020 for each additional person.

**22VAC40-661-50. Parental choice. (Repealed.)**

Families who receive subsidy have full parental choice of all legally operating child care. Agencies must not establish policies that limit parental choice of providers.

**22VAC40-661-53. Access to children. (Repealed.)**

A. Providers used must afford parents unlimited access to their children when they are in care.

B. Providers must afford state and local department staff unlimited access to children in care when one or more children in care receive a child care subsidy.

**22VAC40-661-57. Provider requirements. (Repealed.)**

A. Providers who participate in the subsidy program must be at least 18 years of age, obtain background checks as required by the regulations for their type of child care, and participate in annual training. Providers and other individuals required to have background checks according to § 63.2-1725 of the Code of Virginia who are not otherwise governed by another state regulation requiring background checks shall obtain background checks as defined in this regulation.

B. Background checks for regulated child care providers and local department approved child care providers remain valid according to the provisions of the regulations for their type of child care. Background checks for employees of certified preschools or nursery schools and unregulated family day home providers that participate in the child care subsidy program will remain valid for three years as long as the provider provides continuous services under the child care subsidy program. For any other individual who is required to have background checks according to § 63.2-1725 of the Code of Virginia, the background checks will remain valid for three years as long as the individual maintains continuous employment, residence or volunteer status with that provider.

C. Training requirements will consist of current certification in first aid and cardiopulmonary resuscitation (CPR) as appropriate for the age for the children in care, the cost of which will be borne by the provider. Four hours of skills training will also be required annually. Skills training is available through the department for a nominal fee.

D. All providers who participate in the subsidy program must sign a department-approved agreement that will be based on the level of regulation of the provider. The provider's signature confirms his agreement to comply with the terms of the agreement, including payment processes, absences, and attendance tracking.

E. All providers who participate in the subsidy program must have a working telephone at each site at which child care is provided, as required by the department-approved agreement.

F. Disputes between the provider and the department regarding the payment for services rendered, including decisions made pursuant to the department-approved agreement, or the finding of fraud committed by the provider, may be appealed by the provider pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). This shall be the sole remedy for such disputes.

#### **22VAC40-661-60. Determining payment amount. (Repealed.)**

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.

2. For children with special needs, payment over the maximum reimbursable rate is allowed when this is appropriate as determined by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the reimbursable rate for care of children who do not have special needs.

3. Providers will be paid for the amount of care approved up to the maximum reimbursable rate of the jurisdiction in which the provider is located. The department will pay the rates and fees providers charge the general public, up to the maximum reimbursable rate. Level two providers will be paid a higher maximum reimbursable rate established by the department.

4. For out-of-state providers, the maximum reimbursable rate of the locality in which the local department is located is used.

5. Parents who choose to place a child in a facility with a rate above the maximum reimbursable rate are responsible for payment of any additional amount, unless the local department elects to pay the additional amount out of local funds.

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

C. Registration fee. A single annual registration fee, if charged, will be paid to level two providers only. The registration fee may not exceed \$100. Transportation fees are paid only when the transportation services are provided by the provider. The total cost of care, excluding the single annual registration fee, must not exceed the maximum reimbursable rate and must be identified as one child care cost.

D. Up to 10 holidays identified in subsection 7.6 of the department approved provider agreement will be paid to level two providers. Level one certified preschools, religious-exempt, and voluntary registered providers may be paid for holidays, according to provisions in the department approved vendor agreement. All other level one providers will not receive payment for holidays unless services are provided on that day.

#### **22VAC40-661-70. Case management. (Repealed.)**

A. Application and assessment. Parents who are not receiving TANF and who are at least 18 years of age and who wish to request child care services are required to sign an application and cooperate with an assessment by the local department. Consumer education, including the selection and monitoring of child care, must be provided to parents to assist them in gaining needed information about child care services and availability of providers. As a condition of eligibility, all applicants and recipients must cooperate with the Division of Child Support Enforcement unless the subsidy program determines that good cause exists for their failure to do so.

B. Service planning. Child care workers must complete a written service plan for each child care case. The service plan outlines the mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

C. Due process. Applicants and recipients will be afforded due process through timely written notices of any action deciding or affecting his 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 within 10 days of the effective date of the notice of action, 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.

D. Reassessment. Local departments will make regular contacts with a member of the case household or the provider. The purpose of these contacts is to evaluate whether the child care services authorized are meeting the needs of the child and the parent.

E. Beginning date of service payment.

1. The beginning date of service payment is the date the signed application is received in the local department if the family is determined eligible within 30 days.
2. If the determination is made more than 30 days after the signed application is received, services may begin only on the date eligibility is actually determined, except in the case of administrative delay.
3. Administrative delay is when either the parent or provider does not provide needed information for eligibility purposes to the local department within the 30 days due to circumstances beyond their control.
4. Payment cannot be made to licensed providers prior to the effective dates of their initial licenses.

**F. Parental responsibilities:**

1. Parents must be informed of their responsibility to report changes that could affect their eligibility. These changes must be reported to the local department within 10 calendar days. Parents must be informed that failure to report required changes may result in case closure, repayment of child care costs, or prosecution for fraud.
2. Parents must be informed of their responsibility to pay all fees owed. Parental failure to pay fees may result in case closure.

**G. Termination.** Local department termination of child care services must be planned jointly with the parent and provider. 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 category does not count toward the 72-month limitation.

**H. Waiting list.** 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 if the family chooses.

**22VAC40-661-80. Fraud. (Repealed.)**

**A. Fraud. (Repealed.)**

1. When it is suspected that there has been a deliberate misrepresentation of facts in order to receive benefits, services, or payments, the local department must determine whether or not fraud was committed. There must be clear and convincing evidence that demonstrates that the household or provider committed or intended to commit fraud. Suspected instances of child care fraud shall be referred to the fraud staff for investigation. If there is clear and convincing evidence that fraud has occurred with either the provider or the household, the case will be referred to the attorney for the Commonwealth to determine if the case will be prosecuted. If the household's case does not meet the criteria for prosecution as established by the attorney for the Commonwealth, the case will be referred for an administrative disqualification hearing.

**2. Disqualification:**

a. Parents will be disqualified from participating in the child care subsidy program for three months upon the first finding of child care fraud or an intentional program violation, 12 months upon the second finding, and permanently upon the third finding.

b. Providers will be permanently disqualified from participating in the child care subsidy program upon the first finding of child care fraud.

**B. Repayment.** In addition to any criminal punishment, anyone who causes the local department to make an improper provider payment by withholding required information or by providing false information will be required to repay the amount of the improper payment.

**22VAC40-661-90. Complaints in the child care setting. (Repealed.)**

All complaints regarding possible child abuse or neglect occurring in a child care setting must be referred to the child protective services unit at the local department serving the area where the child care service is located. Information regarding the complaint must be shared with the worker responsible for licensure or approval. All other complaints are referred to the approval authority.

**22VAC40-661-100. Administration. (Repealed.)**

**A. Nonfraud overpayment.** In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program as long as a repayment schedule is entered into with the local department and payments are made according to that schedule.

**B. Overpayments.** Any overpayment must be refunded to the department by the locality.

DOCUMENTS INCORPORATED BY REFERENCE (22VAC40-661)

Child Care and Development Fund Plan for FFY 2014-2015, Department of Social Services, effective October 1, 2013

CHAPTER 665

CHILD CARE PROGRAM

## Part I

## General Provisions

**22VAC40-665-10. Definitions.**

The following words and terms when used in this part shall have the following meanings unless the context indicates otherwise:

"Administrative disqualification hearing" or "ADH" means an impartial review by a state hearing officer of a recipient's actions involving an alleged intentional program violation for the purpose of determining if the individual did or did not commit an intentional program violation.

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Assets" means resources owned by a person or company regarded as having value and available to meet debts and commitments.

"Background checks" means the checks for barrier crimes and offenses required under Article 3, Chapter 17 or Title 63.2 of the Code of Virginia (§§ 63.2-1719 et seq.), including the sworn statement or affirmation as is required there under, the Criminal History Record Check, and the Central Registry Child Protective Services check.

"Child care subsidy and services" or "Child Care Subsidy Program" means the department program that assists eligible low-income families with the cost of child care and those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also includes activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as doubled-up);
3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;
4. A child who is living in congregate, temporary, emergency or transitional shelters;
5. A child who is abandoned in a hospital;
6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and
7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described above.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child with special needs or disability" means: (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC 1401); (ii) a child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Conditional eligibility" means that eligibility has been approved for a period not to exceed 90 days to allow families with a child experiencing homelessness additional time to obtain required documentation needed to complete a final eligibility determination.

"Copayment" means the amount paid to the provider by the parent to contribute toward the cost of child care. Such amount shall be established by the department in accordance with the current Child Care and Development Fund Plan for Virginia, approved by the U.S. Department of Health and Human Services. Copayments do not include charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

"DCSE" means the Division of Child Support Enforcement, the division of the Department of Social Services responsible for locating absent parents;



establishing paternity; and establishing, modifying, enforcing, collecting, and disbursing child support, or child and spousal support.

"Department" means the Virginia Department of Social Services.

"Exit eligibility limit" means the maximum gross countable income amount that a family can receive to be considered income eligible at redetermination. Such amount shall be established by the department in the current Child Care and Development Plan for Virginia approved by the U.S. Department of Health and Human Services.

"Family" means any individual, adult, or adults or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.

"Federal poverty guidelines" means the income levels by family size, determined by the federal Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include, but is not limited to, copayments, charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

"Fee program" means a category in the child care subsidy program that assists low income, non-TANF families with child care services.

"Fiscal year" means the local department financial calendar that begins in June of each calendar year and runs through May of the following calendar year.

"Good cause" means a valid reason as determined by the local department why (i) a parent in a two-parent household cannot provide the needed child care or (ii) why a parent will not be required to register with the Division of Child Support Enforcement.

"Graduated phase out" means the period of time for child care subsidy and services to continue as determined by the local department at redetermination for recipients whose income exceeds the initial eligibility limit but is below the exit eligibility limit.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five, pregnant women, and their families (as established by the Head Start Act (42 USC § 9801)).

"Income eligible" means that eligibility for assistance under the Child Care Subsidy Program is based on income and family size.

"In-home" means child care provided in the home in which all of the children in care reside and in which the provider does not reside.

"Initial eligibility limit" means the maximum gross countable income amount that a family can receive to be considered income eligible. Such amount shall be established by the department in the current Child Care and Development Plan for Virginia approved by the U.S. Department of Health and Human Services.

"Intentional program violation" or "IPV" means any action by an individual for the purpose of establishing or maintaining the family's eligibility for assistance under the Child Care Subsidy Program or for increasing or preventing a reduction in the amount of the assistance by intentionally giving a false or misleading statement or misrepresentation, concealment or withholding of facts or any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

"Level one provider" means a child care provider that is not licensed by the department or is not approved (i) by a licensed family day system, (ii) under a local ordinance in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia, or (iii) by the federal government.

"Level two provider" means a child care provider that is licensed by the department or is approved (i) by a licensed family day system, (ii) under local ordinance in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia, or (iii) by the federal government.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the current Child Care and Development Fund Plan for Virginia, filed with the U.S. Department of Health and Human Services.

"Need for child care" means the parents meets the income eligibility and employment or education requirements set forth in this regulation and requires child care services for part of the day.

"Nonfraud overpayment" means an overpayment that is the result of a local department error, or an inadvertent household or provider error.

"Parent" means the adult or emancipated minor, as defined in § 16.1-334 of the Code of Virginia, who acts as the primary caretaker or guardian of a child, including an individual acting in loco parentis. A parent may be by blood, marriage or adoption and also means a legal guardian, person cohabiting with the natural or adoptive parent of a minor child, or other person standing in loco parentis.

"Provider" or "Child Care Provider" means a person, entity, or organization providing child care services.

"Register with the Division of Child Support Enforcement" means that an applicant or recipient of child care subsidy services provides the information required by the Division of Child Support Enforcement to locate an absent parent, establish paternity, or establish a support order, unless good cause for noncooperation is determined by the program.

"Resource and referral" means services that provide information to parents to assist them in choosing a child care provider, and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of assistance for child care services under the Child Care Subsidy Program.

"Supplemental Nutrition Assistance Program" or "SNAP" means the program administered by the U.S. Department of Agriculture to reduce hunger and increase food security.

"Supplemental Nutrition Assistance Program Employment and Training" or "SNAPE" means the program which provides job search, job search training, education, training, and work experience to nonpublic assistance SNAP recipients.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy assistance to eligible former TANF recipients after the TANF case closes.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a child care vendor that must be entered into and signed before child care payments under the Child Care Subsidy Program can be authorized.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the program of employment opportunities to assist individuals receiving Temporary Assistance for Needy Families in attaining the goal of self-sufficiency as implemented in the Commonwealth of Virginia.

#### **22VAC40-665-20. 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 that, 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.
- (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.

**22VAC40-665-30. Child care subsidy program categories.**

Assistance under the Child Care Subsidy Program is provided through the following program categories, to the extent that funding is available:

1. TANF. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed child care for:

- a. A TANF-capped child;
- b. A child who receives Supplemental Security Income (SSI), if the parent is on the TANF grant and if the child would have been in the public assistance unit were it not for the receipt of SSI; and
- c. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.

2. Income Eligible Programs.

- a. Transitional child care. Child care subsidy and services are made available to eligible children of former TANF recipients for up to the twelve months immediately following TANF case closure to support parental employment if they are found income eligible, and there is a need for child care.
- b. Head Start wrap-around child care. Head Start wrap-around child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start programs.
- c. SNAP child care. Child care subsidy and services are made available to children of parents in Virginia's SNAP Education and Training (SNAPET) program to allow participation in an approved activity.
- d. Fee Program child care. Fee child care subsidy and services are made available to children in eligible low-income families who are not receiving TANF or SNAPET and who meet the eligibility criteria for child care.

**22VAC40-665-40. Case management.**

A. Applicants for child care subsidy and services must be at least 18 years of age unless they are an emancipated minor, or a minor who was receiving services as head of household prior to April, 2016.

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. Applicants and recipients must register with DCSE unless the local department determines that good cause exists for their failure to do so. Failure to register will result in case closure at redetermination.

D. 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.

E. Consumer education, including education on the selection and monitoring of quality child care, and a consumer statement regarding their selected 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.

F. The department shall establish scales for determining financial eligibility for the income eligible child care subsidy program categories in subdivision 2 of 22VAC40-665-30.

- 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'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.

G. 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.

H. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except the following: Supplemental Security Income; TANF benefits, including TANF match payments; Transitional payments of \$50 per month to former VIEW participants; Diversionary Assistance payments; General Relief; SNAP benefits; value of U.S. Department of Agriculture donated food; benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965; value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act; earnings of a child younger than the age of 18 years; Earned Income Tax Credit; lump sum child support payments; scholarships, loans, or grants for education except any portion specified for child care; Basic Allowance for Housing for military personnel living on base; Clothing Maintenance Allowance for military personnel; payments received by AmeriCorps volunteers; tax refunds; lump sum insurance payments; monetary gifts for one-time occasions or normal annual occasions; payments made by non-financially responsible third parties for household obligations, unless payment is made in lieu of wages; loans or money borrowed; money received from sale of property, earnings less than \$25 a month; capital gains; withdrawals of bank deposits; GI Bill benefits; reimbursements, such as for mileage; foreign government restitution payments to Holocaust survivors; payments from the Agent Orange Settlement Fund or any other fund established for settlement of Agent Orange product liability litigation; and 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.

I. 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.

J. 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 is a family of a child experiencing homelessness that was conditionally approved because they could not provide required documentation. If the documentation is provided to the local department within 90 days, the recipient may remain eligible for the remainder of the 12 month eligibility period. If documentation is not provided to the local department within 90 days, or the recipient is determined ineligible after full documentation is provided, the child care case will be closed.

K. Recipients will retain eligibility despite any change in residency within the State.

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

M. 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.

N. Eligibility will be redetermined in the final month of the 12 month eligibility period described in subsection I, at which time the recipient will be contacted in order to have all eligibility criteria be re-evaluated. 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.

Q. 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.

P. 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.

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

4. Pay fees owed to the vendor or reimbursements owed to the local department; failure to do so may result in case closure at redetermination.

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

Q. 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.

R. 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.

S. 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, child care services will continue until a decision is rendered by a hearing officer, if the continuation of services is requested by the parent. 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.

#### **22VAC40-665-50. Parental choice.**

Families who receive child care subsidy and services shall have the right to choose a provider from among child care providers operating legally and who are approved by the department to participate in the Child Care Subsidy Program as a vendor. Local departments shall not establish any policies that limit parental choice of providers.

#### **22VAC40-665-60. Access to children.**

A. Vendors shall allow parents unlimited access to their children when they are in care.

B. Vendors shall allow state and local department staff unlimited access to children in care.

#### **22VAC40-665-70. Vendor requirements.**

A. Vendors who participate in the subsidy program must be at least 18 years of age.

B. Vendors shall permit and cooperate with inspections by staff from the department and local departments of social services.

C. Vendors shall comply with the regulations applicable to their type of child care, including all requirements to conduct background checks.

D. Vendors shall comply with the subsidy program vendor requirements as outlined in Parts II and III of this Chapter applicable to their type of care.

E. All vendors who participate in the Child Care Subsidy Program shall enter into a vendor agreement with the department. The vendor's signature or electronic submission confirms its agreement to comply with the applicable sections of this Chapter and the terms of the agreement, including payment processes, electronic submission and tracking of attendance, absences, and vendor requirements. Vendors shall be subject to monitoring inspections to ensure compliance with this Chapter and with the vendor agreement.

F. Employees of any division within the department or a local department of social services cannot participate in the subsidy program as a vendor.

G. Vendors shall provide notice to individuals required under this Chapter to undergo background checks of the opportunity to challenge the results of the background checks in accordance with the procedures described herein in the

case of criminal checks, or by contacting the local department of social services that reported such individual to be named on the Child Protective Services Central Registry.

1. FBI: If an individual is denied employment or the opportunity to provide volunteer or contractual services because of information appearing on the individual's FBI record and it comes to the individual's attention that he is not the person of the record, the individual may initiate a challenge of the information contained in the record. The facility is required by state and federal laws to provide the individual with a copy of the challenge procedures. The challenge procedures can be found at: <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

2. VIRGINIA STATE POLICE: In instances where it comes to an individual's attention that his/her name or other descriptive information is a matter of record in the Central Criminal Records Exchange, and he/she is not the person of the record, then the individual may initiate a challenge of the information contained in the record as provided at: [http://www.vsp.state.va.us/CJIS\\_CRE.shtm](http://www.vsp.state.va.us/CJIS_CRE.shtm). The individual must report this information to a local sheriff, police or State Police Headquarters and request to be fingerprinted for the purpose of challenging a criminal record. The individual to be fingerprinted must show personal identification. The official taking the fingerprints must document on letterhead paper that he has reviewed the individual's personal identification and obtained the fingerprints. This letter and the fingerprints are to be mailed to the following address: Manager Central Criminal Records Exchange Virginia Department of State Police P. O. Box 27472 Richmond, VA 23261-7472. Within five workdays, the individual who initiated the challenge will receive written confirmation of the fingerprint search results, whether he is or is not the person of the record, and record modification(s) taken, if applicable.

3. If an individual successfully challenges information on a background check in accordance with these procedures, the vendor may submit a request for a new background investigation in order to obtain an accurate record.

H. Disputes between the vendor and the department regarding the payment for services rendered, enforcement or termination of the vendor agreement, or disqualification from participating in the Child Care Subsidy Program may be appealed by the vendor pursuant to the Virginia Administrative Process Act (§§ 2.2-4000 et seq. of the Code of Virginia), as provided herein. This shall be the sole remedy for such disputes.

1. Within 30 days of the date of a written notice of department action against a vendor, the vendor may request an appeal in writing with the department.

2. Upon receiving the vendor's notice of appeal, the department shall schedule an informal conference at which the vendor may provide such further information or present any additional facts for the department to reconsider its action. The department shall issue a written decision within 15 business days from the conclusion of the informal conference. The vendor may waive the holding of the informal conference and request the formal hearing described in subdivision G 3 in its initial request for an appeal to the department.

3. The vendor may appeal the decision from the informal conference by requesting an administrative hearing within 30 days of the date of the decision from the informal conference. The administrative hearing shall be held in accordance with § 2.2-4020 of the Code of Virginia and shall be presided over by a hearing officer designated by the Supreme Court of Virginia pursuant to subsection A of § 2.2-4024 of the Code of Virginia. Within 30 days of the administrative hearing, the hearing officer shall recommend a decision to the Commissioner of the Virginia Department of Social Services. The Commissioner shall issue a final decision within 30 days of receipt of the hearing officer's recommended decision in accordance with subsection C of § 2.2-4021 of the Code of Virginia.

4. The vendor may seek court review of the Commissioner's decision in accordance with Article 3 of the Virginia Administrative Process Act (§§ 2.2-4018 et. seq. of the Code of Virginia).

## **22VAC40-665-80. 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 Appendix F 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 and fees 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 may be paid up to 10 holidays 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 24 days the child is absent per fiscal year.

#### **22VAC40-665-90. Complaints in the child care setting.**

All complaints regarding possible child abuse or neglect occurring in a child care setting must be referred to the child protective services unit at the local department serving the area where the vendor is located. All other complaints must be referred to the department's hotline which will be provided to parents during intake at initial eligibility determination and will be available on the department's website.

#### **22VAC40-665-100. Recipient intentional program violation and disqualification.**

A. When it is suspected that there has been a deliberate misrepresentation of facts by a recipient in order to receive benefits, services or payments, the local department shall investigate whether or not an intentional program violation was committed. If the local department finds clear and convincing evidence that an intentional program violation has occurred, the case will be referred for an administrative disqualification hearing. The local department may also refer the case to the attorney for the Commonwealth for criminal prosecution.

B. Recipients found to have committed an intentional program violation either through an administrative disqualification hearing or by a court of competent jurisdiction shall be ineligible to participate in the Child Care Subsidy Program for a period of three months upon the first finding, 12 months upon the second finding, and permanently upon the third finding.

C. In cases where a nonfraud overpayment occurred due to an inadvertent household error, the parent will not be disqualified from participating in the subsidy program as long as a repayment schedule is entered into with the local department and payments are made according to that schedule.

D. Administrative disqualification hearings shall be held in accordance with the following:

1. Prior to submitting the request for an ADH to the state hearing authority, the local department shall provide written notification to the individual suspected of an intentional program violation that the individual can waive his right to an ADH by signing a waiver request and returning it to the local department within 10 days from the date notification is sent to the individual in order to avoid submission of the request for an ADH.

2. If a signed waiver is received, no ADH is conducted and the disqualification period is imposed.

3. The local department shall request an ADH be scheduled by submitting a written request to the state hearing authority. The form must include the following information:

- a. Identifying information;
- b. Summary of the allegation or allegations;
- c. Summary of the evidence; and
- d. Copies of documents supporting the allegation or allegations.

The referral is to be signed and dated by the supervisor or local department director.

4. The hearing officer will schedule a date for the ADH and provide written notice to the individual suspected of committing an IPV at least 30 days in advance of the date the ADH has been scheduled. The notice shall contain at a minimum:

- a. The date, time, and place of the hearing;
  - b. The charge(s) against the individual;
  - c. A summary of the evidence, and how and where the evidence can be examined;
  - d. A statement that the decision will be based solely on information provided by the department of social services if the individual fails to appear at the hearing;
  - e. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
  - f. A statement that a determination of intentional program violation will result in a disqualification period, and a statement of which penalty is applicable to the case scheduled for a hearing;
  - g. A listing of the individual's rights, including the right to:
    - (1) Examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;
    - (2) At his option, present his case himself or with the aid of an authorized representative;
    - (3) Bring witnesses;
    - (4) Establish all pertinent facts and circumstances;
    - (5) Advance any arguments without undue interference;
    - (6) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.
  - h. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.
5. The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing an IPV. The individual may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The ADH shall not be postponed for more than a total of 30 days and the state hearing authority may limit the number of postponements.
6. The ADH can be held even if the individual fails to appear. The individual has 10 days after the date of the scheduled ADH to present reasons indicating a good cause failure to appear.
7. Even though the individual is not present, the hearing officer shall carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.
8. If the recipient is found to have committed an IPV but a hearing officer later determines there was good cause for not appearing, the previous decision will no longer be valid and a new ADH shall be conducted. The hearing officer who conducted the original hearing may conduct the new hearing. The good cause decision shall be entered into the hearing record by the hearing officer.
9. The hearing officer shall:
- a. Identify those present for the record;
  - b. Advise the individual that he may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charge or charges may be used against him in a court of law;
  - c. Explain the purpose of the ADH, the procedure, and how and by whom a decision will be reached and communicated;
  - d. Consider all relevant issues and determine if an IPV was committed, based on clear and convincing evidence;
  - e. Request, receive and make part of the record all evidence determined necessary to render a decision;
  - f. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and
  - g. Advise the local department to obtain a medical assessment at the local department's expense if the hearing officer considers it necessary.
10. The individual alleged to have committed an IPV shall be given adequate opportunity to:
- a. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local department to establish the alleged IPV, shall be made available;
  - b. Present his own case or with the aid of an authorized representative;
  - c. Bring witnesses;



d. Establish all pertinent facts and circumstances;

e. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses; and

f. Advance arguments without any undue influence.

11. The hearing officer shall prepare a written report of the hearing which shall include findings, conclusions, decisions and appropriate recommendations. The decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent regulations and respond to reasoned arguments made by the individual or representative.

12. If the individual is found to have committed an IPV, the written decision shall advise the individual that disqualification shall occur.

Upon receipt of the notice of a decision from the hearing officer finding that the individual committed an IPV, the local department shall inform the individual of the reason for the disqualification and the date the disqualification will take effect.

**22VAC40-665-105. Vendor agreement termination and vendor disqualification.**

A. A vendor agreement may be terminated for the following:

1. The vendor's license to operate a child care facility is revoked, suspended, or denied.

2. The vendor's business location changes; ownership of the Vendor's business is assigned, sold, or otherwise transferred; the Vendor's business structure changes; the Vendor's employer identification number changes; or the Vendor's legal operating status becomes invalid for any reason.

3. A deliberate misrepresentation of facts to the department or a local department of social services by a vendor in order to receive payments it was not entitled to receive; or if the vendor accepts payments that the vendor knows, or should reasonably have known, that the vendor was not entitled to such payments.

4. The vendor fails to notify the department of a change in circumstances that affects payments received by the Vendor.

5. The vendor's violation of any term of the vendor agreement, of any requirement under this Chapter, or of any state laws and regulations related to the vendor's license or its exemption from licensure, including but not limited to the requirements for background checks of the vendor's employees, volunteers and other individuals who come into contact with children.

B. When it is suspected that there has been a deliberate misrepresentation of facts by a vendor in order to receive payments it was not entitled to receive, the local department shall investigate. If there is clear and convincing evidence that such an act has occurred, the case will be referred to the Division of Child Care and Early Childhood Development for termination of the vendor agreement and possible disqualification from participation in the Child Care Subsidy Program. The local department may also refer the case to the attorney for the Commonwealth for criminal prosecution.

C. Vendors will be permanently disqualified from participating in the Child Care Subsidy Program upon the first criminal conviction of fraud or upon a finding by the department or local department that the vendor deliberately misrepresented facts in order to receive payments it was not entitled to.

D. Vendors found to be repeatedly in violation of their vendor agreement or of the requirements of this Chapter for reasons other than acts by the vendor described in subsection B may be disqualified to participate in the Child Care Subsidy Program for a minimum period of one year.

E. Individuals affiliated with vendors as owners, partners, directors, officers, shareholders, members, and managers shall be subject to disqualification under this section.

**22VAC40-665-110. Repayment.**

A. In addition to any criminal punishment, anyone who causes the local department to make an overpayment to a vendor shall be required to repay the amount of the overpayment.

B. Any overpayment must be refunded to the department by the locality. If an overpayment was made as a result of an error by the local department, the local department will not seek to recoup those funds from the parent or the vendor.

**22VAC40-665-115. Required training for local department staff.**

Local department staff with responsibilities for implementing the Child Care Subsidy and Services Program shall complete guidance training and other training as required by the department.

**PART II**

Subsidy Program Vendor Requirements for Family Day Homes

**22VAC40-665-120. Definitions; subsidy program requirements for family day home vendors.**

The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:

"Accessible" means capable of being entered, reached or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Assistant" means an individual who helps the provider in the care, protection, supervision, and guidance to children in the home.

"Attendance" means the actual presence of an enrolled child.

"Body Fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision, and guidance to children in the home and includes the provider and assistant.

"Child" means any individual under 18 years of age.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as doubled-up);
3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;
4. A child who is living in congregate, temporary, emergency or transitional shelters;
5. A child who is abandoned in a hospital;
6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and
7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described above.

"Child with special needs or disability" means: (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC 1401); (ii) a child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the Commissioner of the Virginia Department of Social Services.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth to 16 months of age.

"Lockdown" means a situation where children are isolated from a security threat and access within and to the home is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamins and mineral supplements.

"Parent" means a parent by blood, marriage or adoption and also means a legal guardian or other person standing in loco parentis.

"Preschool" means a child from two years up to the age of eligibility to attend public school, age five by September 30 of that same year.

"Provider" means a person, entity, or organization providing child care services.

"Residence" means principal legal dwelling that is occupied for living purposes by the provider or a child in care and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"School age" means eligible to attend public school, age five or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body such as unconsciousness; broken bones; dislocation; deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Toddler" means a child from 16 months of age up to 24 months of age.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities/sites operated by the same person, entity or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the family day home and:

1. Is not paid for services provided in the family day home;
2. Is not counted in the caregiver-to-children ratios; and
3. Is in sight and sound supervision of a caregiver when working with a child.

Any unpaid person not meeting this definition shall be considered a "caregiver" and shall meet caregiver requirements.

#### **22VAC40-665-130. Legal Base.**

A. The Child Care Development Block Grant Act of 2014 (42 USC § 9858 et seq.)

B. Code of Virginia §§ 63.2-100, 63.2-203, 63.2-217, 63.2-1712, 63.2-1718, 63.2-1724, 63.2-1725

#### **22VAC40-665-140. Purpose and applicability.**

The standards in this part apply to family day homes that participate in the Child Care Subsidy Program as a vendor. The purpose of these standards is to protect children who are under the age of 13, under the age of 18 and physically or mentally unable to care for themselves, or under court supervision, and who are separated from their parents during part of the day, by:

1. Ensuring that the activities, services, and facilities of family day homes participating in the Child Care Subsidy Program are conducive to the well-being of children; and
2. Reducing risks to the health and safety of such children in the child care environment.

#### **22VAC40-665-150. Operational responsibilities.**

A. The vendor shall ensure compliance with these standards, the terms of the vendor agreement, and all relevant federal, state or local laws and regulations.

B. The vendor shall ensure compliance with any of its own policies that have been disclosed to the parents of an enrolled child.

C. The vendor shall ensure that the applicant, household member, and any caregiver who is or will be involved in the day-to-day operations of the family day

home or is or will be alone with, in control of, or supervising one or more of the children shall undergo a background check in accordance with § 63.2-1725, and shall not have an offense as defined in § 63.2-1719.

D. The vendor shall ensure that the family day home does not exceed the capacity of children cared for as allowed by law or regulation.

E. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care and the vendor shall comply with the standards for these children.

F. The vendor shall inform all caregivers of children's allergies, sensitivities, and dietary restrictions.

G. The vendor shall maintain, in a way that is accessible to all caregivers, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential.

#### **22VAC40-665-160. General recordkeeping; reports.**

A. Caregiver records and children's information shall be kept confidential.

B. The vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

D. Records, reports and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained in the home and made accessible to department's representative for five years after termination of services or separation from employment unless specified otherwise.

#### **22VAC40-665-170. Children's information.**

A. Vendors shall maintain, and keep at the family day home, written or electronic information for each enrolled child which shall be made available to the department's representative upon request.

B. The child's information shall include the following:

1. Child's full name, nickname, (if any), sex, address, and birthdate;

2. Proof of the child's identity;

3. Name, home address, and telephone number for each parent who has custody;

4. Name, address, and phone number for each custodial parent's place of employment or school attendance, if applicable;

5. Name, address, and phone number of at least one person designated by the parent to contact in case of an emergency if the parent cannot be reached;

6. If applicable, information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information, and any special accommodations needed;

7. Names of persons other than the custodial parent who are authorized to pick up the child;

8. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;

9. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection for the provision of medical treatment on religious or other grounds;

10. Written authorization to administer prescription or non-prescription medications if the vendor agrees to administer medication;

11. Special care instructions including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;

12. A written care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food which the child is allergic to and the steps to be taken in the event of a suspected or confirmed allergic reaction;

13. Record of any accidents or injuries sustained by the child while in care;

14. Permission to transport child if the vendor provides transportation;

15. Permission for field trips;

16. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;

17. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;

18. Any written agreements between the parent and the vendor; and

19. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of 22VAC40-665-210 A 2.

**22VAC40-665-180. Caregiver records.**

The following records shall be kept for each caregiver:

1. Name, address, verification of age, date of employment or volunteering.

2. Documentation that background checks were completed, including:

a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:

(1) Satisfactory results of the Virginia State Police name search for criminal history; and

(2) Satisfactory results of the Central Registry Child Protective Services check;

b. The individual's Sworn Statement or Affirmation as to whether the individual has ever been:

(1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges with the Commonwealth or any equivalent offense outside the Commonwealth.

c. The vendor shall have such documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service. However, the vendor shall not be deemed to be in violation of this section if documentation is maintained that the checks were submitted within the first seven days of employment or service and the results are not available due to an administrative delay beyond the vendor's control.

d. Documentation of subsequent background checks conducted every 3 years.

3. Tuberculosis screening results.

4. Certifications for first aid, cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the caregiver.

5. Documentation that training required by 22VAC40-665-230 has been completed that includes the name and topic of the training, the date completed, the total hours of the session, and the names of the organization that sponsored the training and of the trainer.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-190.

**22VAC40-665-190. Health requirements for caregivers.**

A. Each caregiver must be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis. Such statement shall be submitted no later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering.

B. Caregivers shall undergo TB screenings at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional when there are indications that a caregiver's physical or mental health may endanger the health, safety, or well-being of children in care.

D. A caregiver who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

**22VAC40-665-200. Reports.**

A. The vendor shall inform the department's inspector as soon as practicable, but not to exceed one business day, of the following:

1. The death of a child while under the vendor's supervision;

2. A missing child when local authorities have been contacted for help; and

3. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

B. The vendor shall inform the department's representative as soon as practicable, but no more than two business days, of any serious injury to a child while under the vendor's supervision.

C. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

**22VAC40-665-210. Immunizations for children.**

A. Before a child may attend the family day home, the vendor shall obtain documentation that the child has been immunized according to the requirements of § 32.1-46 A of the Code of Virginia and applicable State Board of Health regulations.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record. A conditional enrollment means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan, from a physician or local health department, for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children under the age of two years.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110 of the Regulations for the Immunizations of School Children, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or

2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

**22VAC40-665-220. General qualifications.**

A. The vendor, and any caregivers who are left alone with children, shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.

B. Caregivers must be at least 16 years of age; however no caregiver under the age of 18 may be alone with children or administer medication. Caregivers under the age of 18 shall be under sight and sound supervision of an adult caregiver.

**22VAC40-665-230. Caregiver training and development.**

A. Prior to approval as a subsidy vendor, the prospective vendor shall complete Virginia Pre-Service Training for Child Care Staff sponsored by the Department of Social Services, which shall include the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Subsidy Program.

B. Within the first 90 days of employment or service all caregivers shall complete Virginia Pre-Service Training for Child Care Staff sponsored by the Department of Social Services, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;

13. Oral health; and

14. Introduction to the Subsidy Program.

C. All caregivers hired prior to the effective date of this regulation shall complete Virginia Pre-Service Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics described in subsection B of this section, within 90 days of the date this regulation becomes effective. This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for caregivers shall be completed on the following specific topics prior to the caregiver working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;

2. Responsibilities for reporting suspected child abuse or neglect;

3. Confidentiality;

4. Supervision of children, including arrival and dismissal procedures;

5. Procedures for action in the case of lost or missing children, ill or injured children, medical and general emergencies;

6. Medication administration procedures, if applicable;

7. Emergency preparedness plan as required in 22VAC40-665-400 B;

8. Procedures for response to natural and man-made disasters;

9. Prevention of shaken baby syndrome/abusive head trauma including coping with crying babies, fussy or distraught children;

10. Prevention of sudden infant death syndrome and use of safe sleeping practices;

11. Caregivers who work with children that have food allergies shall receive training in preventing exposure to food(s) to which the child is allergic, preventing cross-contamination, recognizing and responding to any allergic reactions; and

12. Transportation.

E. All caregivers shall have within 30 days of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the age of children in care. The training shall include an in-person competency demonstration; and

2. Current certification in first aid.

3. During the 30 or 90 day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

4. A caregiver who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

F. Caregivers employed prior to the effective date of this regulation must complete CPR and first aid training as required by this section within 90 days of the effective date of this regulation. During this 90 day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

G. CPR and first aid training may count towards the annual training hours required in subsection H of this section if documentation for training as required in 22VAC40-665-180 7 is maintained.

H. Caregivers who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training, including the department's health and safety update course. This training shall be related to child safety, child development, health and safety in the family day home environment, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the administration shall be performed by a caregiver who has satisfactorily completed a training program for this purpose by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a caregiver who is licensed by the Commonwealth of Virginia to administer medications.

The vendor may determine by policy what medications, if any, will be administered at its family day home, including prescription medications or over-the-counter or nonprescription medications.

J. Caregivers required to have the training required in subsection I of this section shall be retrained at three-year intervals.

#### **22VAC40-665-240. Building or home maintenance.**

A. Areas and equipment of the family day home, inside and outside, shall be maintained in a clean, safe and operable condition. Unsafe conditions shall include, but not be limited to, splintered, cracked or otherwise deteriorating wood, chipped or peeling paint; visible cracks, bending or warping, rusting or breakage of any equipment; head entrapment hazards; protruding nails, bolts or other components that entangle clothing or skin; the presence of poisonous plants; tripping hazards; and unstable heavy equipment, furniture, or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 65°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children and cords shall be secured so as not to create a hazard.

2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Sharp kitchen utensils and other sharp objects shall be inaccessible to children unless being used by the caregiver or with children under close supervision.

E. The home shall have an in-service, nonpay telephone.

F. No equipment, materials, or furnishings shall be used if recalled or identified by the U.S. Consumer Product Safety Commission as being hazardous.

G. Radiators, oil and wood burning stoves, floor furnaces, fireplaces, portable electric heaters, and similar heating devices located in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

H. Unvented fuel burning heaters, such as portable oil-burning (kerosene) heaters; portable, unvented liquid or gas fueled heaters; and unvented fireplaces, shall not be used when children are in care.

I. Wood burning stoves and fireplaces and associated chimneys, if used, shall be inspected annually by a knowledgeable inspector to verify that the devices are properly installed, maintained, and cleaned as needed. Documentation of the inspection and cleaning shall be maintained by the vendor.

J. All flammable and combustible materials, including matches, lighters, lighter fluid, kerosene, turpentine, oil and grease products, aerosol cans, and alcohol, shall be stored in an area inaccessible to children.

K. Stairs shall not be accessible to children under two years of age and children over two years of age who are not developmentally ready to climb or descend stairs without supervision.

L. Stairs with three or more risers that do not have protective barriers or guardrails on each side shall not be accessible to children over the age of two.

M. Decks, porches, lofts, or balconies that do not have protective barriers or guardrails shall not be accessible to children.

N. Windows and doors used for ventilation shall be securely screened.

O. Machinery in operation such as lawnmowers and power tools shall be inaccessible to the children in care.

#### **22VAC40-665-250. Hazardous substances and other harmful agents.**

A. Potentially poisonous substances, materials and supplies such as, but not limited to, cleaning agents, disinfectants, deodorizers, plant care chemicals, pesticides, and petroleum distillates shall be stored away from food in areas inaccessible to children.

B. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils or single-service articles and stored separately from food.

C. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate their contents.

D. The vendor shall ensure that:



1. No person smokes or uses an electronic smoking device:

- a. Indoors while children are in care.
- b. In a vehicle when children are transported, or
- c. Outdoors in an area occupied by children.

2. No caregiver is under the effects of medication that impairs functioning, alcohol, or illegal drugs.

**22VAC40-665-260. Bathroom area and furnishings.**

A. Each bathroom area provided for children shall:

- 1. Be within a contained area, readily available and within the home used by the children;
  - 2. Have toilets that are flushable;
  - 3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F; and
  - 4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children.
- B. There shall be a toilet chair or an adult-sized toilet with a platform or steps and adapter seat available to a child being toilet trained.
- C. School age children of the opposite sex shall not use the same bathroom at the same time.

**22VAC40-665-270. Play areas.**

- A. The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards.
- B. A nonclimbable barrier at least four feet high, such as a fence or impenetrable hedge, shall surround outdoor play areas located within 30 feet of hazards including lakes, ponds, railroad tracks, and streets with speed limits in excess of 25 miles per hour or with heavy traffic.
- C. Stationary outdoor playground equipment shall not be installed over concrete, asphalt, or any other hard surface.
- D. Trampolines shall not be used during the hours children are in care.

**22VAC40-665-280. Supervision and ratio requirements.**

- A. A caregiver shall be physically present on site and provide direct care and supervision of each child at all times. Direct care and supervision of each child includes:
- 1. Awareness of and responsibility for each child in care, including being near enough to intervene if needed; and
  - 2. Monitoring of each sleeping infant in one of the following ways:
    - a. By placing each infant for sleep in a location where the infant is within sight and hearing of a caregiver;
    - b. By in-person observation of each sleeping infant at least once every 15 minutes; or
    - c. By using a baby monitor.
- B. Caregivers shall actively supervise each child during outdoor play to minimize the risk of injury to a child.
- C. A caregiver may allow only school age children to play outdoors while the caregiver is indoors if the caregiver can hear the children playing outdoors.
- D. No child under five years of age or a child older than five who lacks the motor skills and strength to avoid accidental drowning, scalding, or falling while bathing shall be left unattended while in the bathtub.
- E. An additional caregiver will be needed to supervise the number of children at a given time when, using the following point system, 16 points is reached:
- 1. Children from birth through 15 months of age count as four points each;
  - 2. Children from 16 months through 23 months of age count as three points each;
  - 3. Children from two through four years of age count as two points each;
  - 4. Children from five years through nine years of age count as one point each; and
  - 5. Children who are 10 years of age and older count as zero points.
- F. A vendor's own children and resident children under eight years of age shall count in point calculations.
- G. In accordance with § 63.2-100 of the Code of Virginia, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.

**22VAC40-665-290. Supervision near water.**

A. Access to the water in aboveground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

B. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, inground swimming or wading pools, ponds, or fountains not enclosed by safety fences.

C. Portable wading pools without integral filter systems shall:

1. Be emptied after use by each group of children, rinsed, and filled with clean water, or more frequently as necessary; and

2. When not in use during the vendor's hours of operation, be emptied, sanitized, and stored in a position to keep them clean and dry.

D. Portable wading pools shall not be used by children who are not toilet trained.

E. Hot tubs, spas, and whirlpools shall:

1. Not be used by children in care, and

2. Covered with safety covers while children are in care.

F. The level of supervision by caregivers required and the point system as outlined in 22VAC40-665-280 shall be maintained while the children are participating in swimming or wading activities.

G. Caregivers shall have a system for accounting for all children in the water.

H. Outdoor swimming activities shall occur only during daylight hours.

I. When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the family day home:

1. A minimum of least two caregivers shall be present and able to supervise the children; and

2. An individual currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding shall be on duty supervising the children participating in swimming or wading activities at all times.

**22VAC40-665-300. Daily activities.**

A. Infants and toddlers shall be provided with opportunities to:

1. Interact with caregivers and other children in the home in order to stimulate language development;

2. Play with a wide variety of safe, age-appropriate toys;

3. Receive individual attention from caregivers including, but not limited to, holding, cuddling, talking, and reading; and

4. Reach, grasp, pull up, creep, crawl, and walk to develop motor skills.

B. Infants and toddlers shall spend no more than 30 continuous minutes during waking hours, with the exception of mealtimes, confined in a crib, play pen, high chair or other confining piece of equipment. The intervening time period between such confinements shall be at least one hour.

C. Infants shall be placed on their backs when sleeping or napping unless otherwise ordered by a written statement signed by the child's physician.

D. An infant, toddler, or preschool child who falls asleep in a play space other than his own crib, cot, mat, or bed shall be moved promptly to his designated sleeping space if the safety or comfort of the infant, toddler, or preschool child is in question.

E. School age children shall be allowed to nap if needed, but not forced to do so.

F. Infants shall be protected from older children.

**22VAC40-665-310. Behavioral guidance.**

A. Behavioral guidance shall be constructive in nature, age and stage appropriate, and shall be intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, support and:

1. Respect personal privacy;

2. Respect differences in cultural, ethnic, and family background;

3. Encourage decision-making abilities;

4. Promote ways of getting along;

5. Encourage independence and self-direction; and

6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age.

2. It shall not be used with infants or toddlers:

3. The child shall be in a safe, lighted, well-ventilated place, and within sight and sound of a caregiver; and

4. The child shall not be left alone inside or outside the home while separated from the group.

**22VAC40-665-320. Forbidden actions.**

The following actions or threats thereof are forbidden:

1. Physical punishment, including, but not limited to, striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment.

2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards, high chairs, and safety gates when used for their intended purpose with children preschool age or younger.

3. Punishment by another child;

4. Withholding or forcing of food, water, or rest;

5. Verbal remarks that are demeaning to the child;

6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

**22VAC40-665-330. Parental involvement and notifications.**

A. The caregiver shall notify the parent immediately if a child is lost, requires emergency medical treatment, sustains a serious injury, or dies.

B. The caregiver shall notify the parent by the end of the day of any known minor injuries.

C. The caregiver shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;

2. Name of injured child;

3. Type and circumstance of the injury;

4. Caregiver present and treatment;

5. Date and time when parents were notified; and

6. Caregiver and parent signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion of the prohibited food even if a reaction did not occur.

E. Parents shall be informed of the vendor's emergency preparedness plan.

F. Caregivers shall promptly inform parents when persistent behavioral problems are observed and identified.

G. Caregivers shall provide information weekly to parents about the child's health, development, behavior, adjustment, or needs.

H. Parents shall be informed of the reason for a child's termination from care.

I. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the care of the vendor, pursuant to § 63.2-1813 of the Code of Virginia.

J. When children at the family day home have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor's having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

**22VAC40-665-340. Furnishings, equipment and materials.**

A. Furnishings, materials, and equipment used for child care shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children under the age of three years.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. If play yards, portable cribs, or mesh-sided cribs are used for sleeping or napping they shall meet the requirements of subsections H through L of this section.

F. Cribs shall be provided for children from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot, rest mat or bed during the designated rest periods and shall not be occupied by more than one child at a time.

G. Cots, rest mats or beds shall be provided for children over 12 months of age and shall not be occupied by more than one child at a time.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR parts 1219, 1220 and 1500).

2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children under two years of age while sleeping or resting including quilts, sheepskins or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

M. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants over five months of age or infants who are able to push up on their hands and knees.

N. Crib sides shall always be up and the fastenings secured when a child is in the crib.

O. Use of double-deck cribs is prohibited.

**22VAC40-665-350. Bedding and linens for use while sleeping or resting.**

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material which can be cleaned and sanitized.

**22VAC40-665-360. Preventing the spread of disease.**

A. A child shall not be allowed to attend the family day home for the day if he has:

1. A temperature over 101°F;
2. Recurrent vomiting or diarrhea; or
3. Symptoms of a communicable disease.

B. If all children in care are from a single family unit, the caregiver may choose not to exclude a child that is ill.

C. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the family day home as soon as possible after the signs or symptoms are observed; and
2. The child shall remain in a designated quiet area until leaving the family day home.

D. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

**22VAC40-665-370. Hand washing and toileting procedures.**

A. When hand washing, the following shall apply:

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.
2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces or urine.
3. Caregivers shall wash their hands with soap and running water before and after helping a child use the toilet or a diaper change, after the caregiver uses the toilet, after any contact with body fluids, before feeding or helping children with feeding, and before preparing or serving food or beverages.
4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. A child shall not be left unattended on a changing table during diapering.

C. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

D. During each diaper change or after toileting accidents, the child's genital area shall be thoroughly cleaned with a moist disposable wipe or a moist, clean individually assigned cloth, if the child is allergic to disposable wipes.

E. The diapering surface shall be:

1. Separate from the kitchen, food preparation areas, or surfaces used for children's activities;

2. Nonabsorbent and washable; and

3. Cleaned and sanitized after each use.

F. Soiled disposable diapers and wipes shall be disposed of in a leak-proof or plastic-lined storage system that is either foot operated or used in such a way that neither the caregiver's hand nor the soiled diaper or wipe touches the exterior surface of the storage system during disposal.

G. When cloth diapers are used, a separate leak-proof storage system as specified in subsection F of this section shall be used.

H. Children five years of age and older shall be permitted privacy when toileting.

I. Caregivers shall respond promptly to a child's request for toileting assistance.

J. Toilet chairs, when used, shall be emptied promptly, cleaned and sanitized after each use.

**22VAC40-665-380. General requirements for medication administration.**

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies, and

2. Only with written authorization from the parent.

B. The vendor may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements of 22VAC40-665-230 I and J;

2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

C. The vendor may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older;

2. Labeled with the child's name;

3. In the original container with the manufacturer's direction label attached; and

4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

D. Nonprescription medication shall not be used beyond the expiration date of the product.

E. Medications for children in care shall be stored separately from medications for household members and caregivers.

F. When needed, medication shall be refrigerated.

G. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

H. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall be inaccessible to the children.

I. The vendor shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;

2. Amount and type of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Name of the caregiver administering the medication;

5. Any adverse reactions; and

6. Any medication error.

**22VAC40-665-390. First aid and emergency supplies.**

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:

a. Scissors;

b. Tweezers;

c. Gauze pads;

d. Adhesive tape;

e. Bandages, assorted types and sizes;

f. An antiseptic cleansing solution/pads;

g. Digital thermometer; and

h. Single use gloves such as surgical or examination gloves.

2. An ice pack or cooling agent.

B. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight; and

2. One working, battery-operated radio.

#### **22VAC40-665-400. Procedures for emergencies.**

A. The vendor shall have a written emergency preparedness plan that addresses caregiver responsibility and home readiness with respect to emergency evacuation, relocation, lockdown and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenario or scenarios, including but not limited to fire, severe storms, flooding, tornadoes, loss of utilities, earthquakes, intruders, violence on or near the premises, chemical spills, and facility damage or other situations that may require evacuation, lockdown or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Sounding of alarms (evacuation, intruder, shelter-in-place such as for tornado, or chemical hazard);

2. Emergency communication to include:

a. Notification of local authorities (fire and rescue, law enforcement, emergency medical services, poison control, health department, etc.), parents, and local media; and

b. Availability and primary use of communication equipment;

3. Evacuation and relocation procedures, including:

a. Assembly points, designated relocation site, head counts, primary and secondary means of egress, and complete evacuation of the buildings;

b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;

c. Securing of essential documents (attendance record, parent contact information, etc.) and special healthcare supplies to be carried off-site on immediate notice;

d. Method of communication after the evacuation; and

e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child.

4. Shelter-in-place, including:

a. Scenario applicability, inside assembly points, head counts, primary and secondary means of access and egress;

b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;

c. Securing essential documents (attendance record, parent contact information, etc.) and special health supplies to be carried into the designated assembly points;

d. Method of communication after the shelter-in-place; and

e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child.

5. Lockdown procedures, including:

a. Methods to alert caregivers and emergency responders;

b. Methods to secure the family day home and designated lockdown locations;

c. Methods to account for all children in the lockdown locations;

d. Methods of communication with parents and emergency responders;

e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and

f. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child.

6. Caregiver training requirements, drill frequency, and plan review and update; and

7. Continuity of operations procedures to ensure that essential functions are maintained during an emergency.

C. A 911 or local dial number for police, fire and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.

**22VAC40-665-410. Emergency response drills.**

A. The emergency response drills shall be practiced as follows:

1. Evacuation procedures shall be practiced at least monthly;
2. Shelter-in-place procedures shall be practiced twice a year; and
3. Lockdown procedures shall be practiced at least annually.

B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

**22VAC40-665-420. Nutrition and food services.**

A. Vendors shall schedule appropriate times for snacks or meals, or both, depending on the hours of operation and time of the day.

B. Drinking water shall be accessible to all children.

C. When meals or snacks are provided by the vendor, the following shall apply:

1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and in sufficient portions.
2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

D. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;
2. The vendor shall have extra food or provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and
3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

E. Tables and high chair trays shall be cleaned and sanitized daily and before and after each use for feeding.

F. Food shall be prepared, stored, served, and transported in a clean and sanitary manner.

G. When food is prepared that a child is allergic to, the caregiver shall take steps to avoid cross contamination in order to prevent an allergic reaction.

H. Caregivers shall not serve prohibited food to a child.

**22VAC40-665-430. Special feeding needs.**

A. High chairs, infant carrier seats, or feeding tables shall be used for children under 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair or feeding tables, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated and labeled with the child's name, if more than one infant is in care.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula or breast milk shall not be heated or warmed directly in a microwave. Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby jar and is labeled with the child's name, dated and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Caregivers shall feed semisolid food with a spoon unless written instructions from a physician or physician's designee state differently.

**22VAC40-665-440. Transportation and field trips.**

A. If the vendor provides transportation, the vendor shall be responsible for the care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.

C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;

2. The vehicle's seats shall be attached to the floor;

3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;

4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and

5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§46.2-1095 through 46.2-1100 of the Code of Virginia, and stated maximum number of passengers in a given vehicle are not exceeded;

2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;

3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;

4. At least one caregiver or the driver always remains in the vehicle when children are present;

5. Caregiver has a list of the names of the children being transported;

6. Caregiver has a copy of each child's emergency contact information; and

7. Allergy Care Plan and information as specified in 22VAC40-665-170 B 12 shall be carried.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Caregivers shall verify that all children have been removed from the vehicle at the conclusion of any trip.

**22VAC40-665-450. Animals and pets.**

A. Animals shall not be allowed on any surfaces where food is prepared or served.

B. A pet or animal present at the home, indoors or outdoors, shall be in good health and show no evidence of carrying any disease.

C. Dogs or cats, where allowed, shall be vaccinated for rabies and shall be treated for fleas, ticks, or worms as needed.

D. The vendor shall maintain documentation of the current rabies vaccination for dogs and cats.

E. Caregiver shall closely supervise children when children are exposed to animals.

F. Children shall be instructed on safe procedures to follow when in close proximity to animals, e.g., not to provoke or startle them or remove their food.

G. Monkeys, ferrets, reptiles, psittacine birds (birds of the parrot family), or wild or dangerous animals shall not be in areas accessible to children during the hours children are in care.

H. Animal litter boxes, toys, food dishes, and water dishes shall be inaccessible to children.

**22VAC40-665-460. Evening and overnight care.**

A. Caregivers shall remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

C. For overnight, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.



D. In addition to requirements in 22VAC40-665-350 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. When children are six years of age or older, boys and girls shall have separate sleeping areas.

F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.

G. When bath towels are used, they shall be assigned for individual use.

H. Quiet activities shall be available immediately before bedtime.

### Part III

#### Subsidy Program Vendor Requirements for Child Day Centers

#### **22VAC40-665-470. Definitions; subsidy program requirements for child day center vendors.**

The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

1. "Infant" means a child from birth to 16 months.

2. "Toddler" means a child from 16 months up to two years.

3. "Preschool" means a child from two years up to the age of eligibility to attend public school, five years by September 30.

4. "School age" means a child eligible to attend public school, age five or older by September 30 of that same year. Four- or five-year-old children included in a group of school children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Body fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, injury or tissue discharge.

"Center" means a child day center.

"Child" means any individual under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;

2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as doubled-up);

3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;

4. A child who is living in congregate, temporary, emergency or transitional shelters;

5. A child who is abandoned in a hospital;

6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described above.

"Child with special needs or disability" means: (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC 1401); (ii) a child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or

the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the Commissioner of the Virginia Department of Social Services.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Group size" means the number of children assigned to a staff member or team of staff members occupying an individual room or area.

"Inaccessible" means not capable of being entered, reached, or used.

"Lockdown" means a situation where children are isolated from a security threat and access within and to the center is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamins and mineral supplements.

"Parent" means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing in loco parentis.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"Serious injury" means a wound or other specific damage to the body such as unconsciousness; broken bones; dislocation; deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected space(s) within the building.

"Staff" means administrative, activity, and service personnel including the vendor when the vendor is an individual who works in the center, any persons counted in the staff-to-children ratios, or any persons working with a child without sight and sound supervision of a staff member.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities/sites operated by the same person, entity or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed by all vendors before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the center and:

1. Is not paid for services provided to the center;
2. Is not counted in the staff-to-children ratios; and
3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

#### **22VAC40-665-480. Legal base.**

- A. The Child Care Development Block Grant Act of 2014 (42 USC § 9858 et seq.)
- B. Code of Virginia, §§ 63.2-100, 63.2-203, 63.2-217, 63.2-1712, 63.2-1718, 63.2-1724 and 63.2-1725.

#### **22VAC40-665-490. Purpose and applicability.**

The standards in this part apply to child day centers that are applying to participate in the Child Care Subsidy Program. The purpose of these standards is to protect children who are under the age of 13, under the age of 18 and physically or

mentally unable to care for themselves, or are under court supervision who are separated from their parents during part of the day by:

1. Ensuring that the activities, services, and facilities of centers participating in the Child Care Subsidy Program are conducive to the well-being of children; and

2. Reducing risks to the health and safety of such children in the child care environment.

**22VAC40-665-500. Operational responsibilities.**

A. The vendor shall ensure compliance with these standards, the terms of the vendor agreement, and with all relevant federal, state or local laws and regulations.

B. Pursuant to § 63.2-1725, the vendor shall ensure that the applicant and any staff who is or will be involved in the day-to-day operations of the center or is or will be alone with, in control of, or supervising one or more of the children shall not be guilty of an offense, as defined in § 63.2-1719.

C. The vendor shall ensure that the center does not exceed the capacity of children cared for as allowed by law or regulation.

D. When at least one child receives care for compensation all children who are in care and supervision count in the capacity of children care for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care and the vendor shall comply with the standards for these children.

E. The vendor shall inform all staff who work with children of children's allergies, sensitivities, and dietary restrictions.

F. The vendor shall maintain, in a way that is accessible to all staff who work with children, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential in each room or area where children are present.

G. Religious exempt child day centers that are exempt from licensure in accordance with § 63.2-1716, shall be in compliance with all requirements of § 63.2-1716.

**22VAC40-665-510. General recordkeeping: reports.**

A. Staff records and children's information shall be treated confidentially.

B. For each group of children, the vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Records, reports and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained and made accessible to department representatives for five years after termination of services or separation from employment unless specified otherwise.

**22VAC40-665-520. Children's records.**

A. The vendor shall maintain, and keep at the center, a record for each enrolled child which shall be made accessible to the department's representative, upon request.

B. The child's record shall include the following:

1. Child's full name, nickname (if any), sex, address, and birthdate;
2. Name, home address, and telephone number for each parent who has custody;
3. Name, address, and phone number for each custodial parent's place of employment or school attendance, if applicable;
4. Name, address, and phone number of at least one person designated by the parent to contact in case of an emergency and the parent cannot be reached;
5. Information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information, and any special accommodations needed, if applicable;
6. Names of persons other than the custodial parent who are authorized to pick up the child;
7. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;
8. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection for the provision of medical treatment on religious or other grounds;
9. Written authorization to administer prescription or non-prescription medications if the vendor administers medication;

10. Special care instructions including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;

11. A written allergy care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic to and steps to be taken in the event of a suspected or confirmed allergic reaction;

12. Proof of a child's identity and age as stated in §63.2-1809 of the Code of Virginia;

13. Permission to transport child if the vendor provides transportation;

14. Permission for field trips;

15. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;

16. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;

17. Any written agreements between the parent and the vendor; and

18. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of 22VAC40-665-560 A 2.

**22VAC40-665-530. Staff records.**

The following records shall be kept for each staff person:

1. Name, address, verification of age, date of employment or volunteering.

2. Documentation that background checks were completed, including:

a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:

(1) Satisfactory results of the Virginia State Police name search for criminal history; and

(2) Satisfactory results of the Central Registry Child Protective Services check;

b. The individual's Sworn Statement or Affirmation as to whether the individual has ever been:

(1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth.

c. The vendor shall have documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service. However, the vendor shall not be deemed to be in violation of this section if documentation is maintained that the checks were submitted within the first seven days of employment or service and the results are not available due to an administrative delay beyond the vendor's control.

d. Documentation of subsequent background checks conducted every 3 years.

3. Tuberculosis screening results.

4. Certifications of first aid, cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.

5. Documentation that training required in 22VAC-665-580 has been completed, including the date completed, the total hours of the session, and the names of the trainer and of any sponsoring organization.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-540.

**22VAC40-665-540. Health requirements for staff.**

A. Staff shall be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis. Such statement shall be submitted not later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering.

B. Subsequent TB screenings are required at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional if there are indications that a staff member's physical or mental health may endanger the health, safety or well-being of children in care.

D. A staff who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children

and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

**22VAC40-665-550. Reports.**

Reports shall be filed and maintained as follows:

1. The vendor shall inform the department's inspector as soon as practicable, but not more than one business day, of the following:

- a. The death of a child while under the vendor's supervision;
  - b. A missing child when local authorities have been contacted for help; and
  - c. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.
2. The vendor shall inform the department's representative as soon as practicable, but not more than two business days, of any serious injury to a child while under the vendor's supervision.

3. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

**22VAC40-665-560. Immunizations for children.**

A. The vendor shall obtain documentation that each child has received the immunizations required by the State Board of Health before the child can attend the center.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record.

"Conditional enrollment" means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan, from a physician or local health department, for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of the required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children under the age of two years.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110 of the Regulations for the Immunizations of School Children, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or
2. A physician or a local health department states on a Department of Health – approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

**22VAC40-665-570. General qualifications.**

A. The vendor must be at least 18 years of age.

B. The vendor, and any staff who are left alone with children, shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.

C. Staff must be at least 16 years of age; however no staff person under the age of 18 may be alone with children or administer medication.

1. Staff members under the age of 18 shall be under direct sight and sound supervision of an adult staff member.
2. Adult staff members shall supervise no more than two volunteers or staff members under the age of 18 at any given time.

**22VAC40-665-580. Staff training and development.**

A. Prior to approval as a subsidy vendor, the vendor or designee shall complete the Virginia Pre-Service Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of Sudden Infant Death Syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;

5. Prevention of Shaken Baby Syndrome and Abusive Head Trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Subsidy Program.

B. Within the first 90 days of employment or subsidy vendor approval all staff who work directly with children shall complete Virginia Pre-Service Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of Sudden Infant Death Syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of Shaken Baby Syndrome and Abusive Head Trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by bodily fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and mindset;
13. Oral health; and
14. Introduction to the Subsidy Program.

C. All staff who work directly with children and who are employed prior to the effective date of this regulation shall complete Virginia Pre-Service Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics applicable to new staff, within 90 days of the date this regulation becomes effective. This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for staff shall be completed on the following facility specific topics prior to the staff member working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;
2. Responsibilities for reporting suspected child abuse or neglect;
3. Confidentiality;
4. Supervision of children, including arrival and dismissal procedures;
5. Procedures for action in the case of lost or missing children, ill or injured children, medical and general emergencies;
6. Medication administration procedures, if applicable;
7. Emergency preparedness plan as required in 22VAC40-665-770 B;
8. Prevention of shaken baby syndrome/abusive head trauma including coping with crying babies, fussy or distraught children;
9. Prevention of sudden infant death syndrome and use of safe sleeping practices;
10. Staff who work with children that have food allergies shall receive training in preventing exposure to food(s) to which the child is allergic, preventing cross-contamination, recognizing and responding to any allergic reactions; and
11. Transportation.

E. All staff who work directly with children shall have within 30 days of the date of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the age of children in care. The training shall include an in-person competency demonstration; and
2. Current certification in first aid.

3. During the 30 or 90 day period, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

4. A staff who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

F. All staff who work directly with children and who are employed by an approved vendor prior to the effective date of this regulation must complete CPR and first aid training as required by this section within 90 days of the effective date of this regulation. During this 90 days, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

G. CPR and First Aid training may count towards the annual training hours required in subsection H of this section if documentation for training as required in 22VAC40-665-530 7 is maintained.

H. Staff who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training and staff development activities, including the department's health and safety update course. Training shall be related to child safety, child development, the function of the center, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the administration shall be performed by a staff member who has satisfactorily completed a training program for this purpose by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a staff member who is licensed by the Commonwealth of Virginia to administer medications.

The administration of medicines by a vendor may be limited by policy to:

1. Prescription medications;
2. Over-the-counter or nonprescription medications; or
3. No medications.

J. Staff required to have the training specified in subsection I of this section shall be retrained at three-year intervals.

K. There shall be at least one staff on duty who has obtained within the last three years instruction in performing a daily health observation of children. Daily health observation training shall include:

1. Components of daily health check for children;
2. Inclusion and exclusion of a child when the child is exhibiting symptoms that indicate possible illness;
3. Description of how diseases are spread and procedures and methods for reducing the spread of disease;
4. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and

5. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's (OSHA) Bloodborne Pathogens regulation.

**22VAC40-665-590. Certifications by other agencies; requirements prior to initial approval.**

A. Before approval of a vendor agreement and before use of newly constructed, renovated, remodeled, or altered buildings or sections or buildings, written documentation of the following shall be provided by the vendor to the department representative:

1. Certification by the authority having jurisdiction that each building meets building and fire codes or that a plan of correction has been approved; and
2. Certification from the local health department, or approval of a plan of correction, for meeting requirements for:
  - a. Water supply;
  - b. Sewage disposal system; and
  - c. Food service, if applicable.
3. Any building which is currently zoned or certified for school occupancy and which houses a public or private school during the school year shall be considered to have met the requirements of subdivision 1 of this subsection when housing a center serving only children two and a half years of age or older.

**22VAC40-665-600. Certification by other agencies; requirements subsequent to initial approval.**

A. The vendor shall provide the department representative an annual fire inspection report from the appropriate fire official having jurisdiction. If a center is

located in a building currently housing a public or private school, the school's annual fire inspection report shall be accepted.

B. The vendor shall provide the department representative an annual certification from the Health Department, or approvals of a plan of correction, for meeting requirements for:

1. Water supply;
2. Sewage disposal system; and
3. Food service, if applicable.

**22VAC40-665-610. Building or facility maintenance.**

A. Areas and equipment of the center, inside and outside, shall be maintained in a clean, safe and operable condition. Unsafe conditions shall include, but not be limited to, splintered, cracked or otherwise deteriorating wood, chipped or peeling paint; visible cracks, bending or warping, rusting or breakage of any equipment; head entrapment hazards; protruding nails, bolts or other components that entangle clothing or skin; and unstable heavy equipment, furniture or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 68°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children and cords shall be secured so as not to create a hazard.
2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Building equipment shall include, but not be limited to, an in-service, nonpay telephone.

**22VAC40-665-620. Hazardous substances and other harmful agents.**

A. Hazardous substances such as cleaning materials, insecticides, and pesticides shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall not be accessible to children. Cleaning supplies to clean and sanitize the diapering area or toilet chairs do not need to be kept locked during diapering or toilet training time as long as they are inaccessible to children.

B. Pesticides or insecticides shall not be stored in areas used by children or in areas used for food preparation or storage.

C. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils or single-service articles and shall be stored separate from food.

D. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate its contents.

E. Smoking and the use of electronic smoking devices shall be prohibited in the interior of a center, in vehicles when children are being transported, and if permitted outside, shall be prohibited in the presence of children.

**22VAC40-665-630. Restroom area and furnishings.**

A. The facility shall have at least two toilets and two sinks.

B. The facility shall have at least one toilet and one sink for every 30 children.

C. Each restroom area provided for children shall:

1. Be within a contained area, readily available and within the building used by the children;
2. Have toilets that are flushable;
3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F;
4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children; and

5. A restroom for school age children that contains more than one toilet shall have at least one toilet enclosed.

**22VAC40-665-640. Play areas.**

The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment. The requirements of this section shall not prohibit child day programs providing care to school-age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school years from permitting school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.



**22VAC40-665-650. Supervision, ratio, and group size requirements.**

A. The vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following ratio requirements are maintained:

1. For children from birth to the age of 16 months: one staff member for every four children;

2. For children 16 months to two years: one staff member for every five children;

3. For two year old children: one staff member for every eight children;

4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children;

5. For children from age of eligibility to attend public school through eight years: one staff member for every 18 children; and

6. For children from nine years through 12 years: one staff member for every 20 children.

B. The vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following group size requirements are maintained:

1. For children from birth to the age of 16 months: the maximum group size is 12 children;

2. For children 16 months to two years: the maximum group size is 15 children;

3. For two-year-old children: the maximum group size is 24 children; and

4. For children from three years to the age of eligibility to attend public school, five years by September 30: the maximum group size is 30 children.

5. Maximum group size requirements shall be maintained at all times except during meals or snacks, the designated rest period, outdoor play, transportation and field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day.

6. Group size requirements in this section do not apply to children school age eligible through 12 years of age.

C. Facilities operated by, or under the auspices of a religious institution and are exempt from licensure shall employ supervisory personnel as set forth in §63.2-1716 of the Code of Virginia and shall ensure the following ratio requirements are maintained:

1. For children from birth to two years: one staff member for every four children;

2. For children from two years to six years: one staff member for every 10 children; and

3. For children from six years up to 12 years: one staff member for every 25 children.

D. Facilities operated by, or under the auspices of a religious institution and are exempt from licensure shall ensure the following group size requirements are maintained:

1. For children from birth to two years: the maximum group size is 12 children; and

2. For children from two years to six years: the maximum group size is 30 children.

3. Maximum group size requirements shall be maintained at all times with the exception of when meals or snacks are served, the designated rest period, outdoor play, transportation and field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day. However, vendors operated by, or under the auspices of a religious institution must have a staff member present for each age group of children as defined in §63.2-1716 of the Code of Virginia. Example: one staff must be present for any of the children age birth to 24 months, an additional staff member must be present if any of the children are age two to six, and a third staff member must be present if any children are age six to 12.

4. Group size requirements in this section do not apply to children who are six years up to 12 years of age.

E. The vendor shall develop and implement a written policy and procedure that describes how the vendor will ensure that each group of children receives care by consistent staff or team of staff members.

F. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

G. When children are in ongoing mixed age groups, the staff-to-children ratio and group size applicable to the youngest child in the group shall apply to the entire group.

H. Children under 10 years of age shall always be within actual sight and sound supervision of staff, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to ensure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while in use by children; and

2. Staff checks on a child who has not returned from the restroom after five minutes. Depending on the location and layout of the restroom, staff may need to provide intermittent sight supervision of the children in the restroom area during this five-minute period to assure the safety of children and to provide assistance to children as needed.

I. Children 10 years of age and older shall be within actual sight and sound supervision of staff except when the following requirements are met:

1. Staff can hear or see the children (video equipment, intercom systems, or other technological devices shall not substitute for staff being able to directly see or hear children);

2. Staff are nearby so they can provide immediate intervention if needed;

3. There is a system to ensure that staff know where the children are and what they are doing;

4. There is a system to ensure that individuals who are not staff members or persons allowed to pick up children in care do not enter the areas where children are not under sight supervision; and

5. Staff provides sight and sound supervision of the children at variable and unpredictable intervals not to exceed 15 minutes.

J. When the outdoor activity area is not adjacent to the center, there shall be at least two staff members in the outdoor activity area whenever one or more children are present.

K. Staff shall not allow a child to leave the center unsupervised.

L. For vendors operated by, or under the auspices of a religious institution and are exempt from licensure, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 24 months of age may be double the number of children to each staff required by section C if:

1. The staff person is within sight and sound of sleeping children;

2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and

3. An additional person is present to help.

M. For vendors not operated by, or under the auspices of a religious institution, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 16 months of age may be double the number of children to each staff required by section A if:

1. The staff person is within sight and sound of sleeping children;

2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and

3. An additional person is present to help.

#### **22VAC40-665-660. Supervision near water.**

A. Indoor swimming pools on the center premises shall be kept locked when the pool is not in use. Outdoor swimming pools located on the center premises shall be enclosed by safety fences and gates which are in compliance with the applicable edition of the Virginia Uniform Statewide Building Code (13VAC5-63) and shall be kept locked when the pool is not in use.

B. The staff-to-children ratios required by 22VAC40-665-650 shall be maintained while children are participating in swimming or wading activities.

1. Notwithstanding the staff-to-children ratios already indicated, at no time shall there be fewer than two staff members supervising the activity.

2. The designated certified lifeguard shall not be counted in the staff-to-children ratios.

C. If a pool, lake, or other swimming area has a water depth of more than two feet, a certified lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water.

D. The vendor shall have emergency procedures and written safety rules for swimming or wading or follow the posted rules of public pools that are:

1. Posted in the swimming area when the pool is located on the premises of the center; and

2. Explained to children participating in swimming or wading activities.

E. Staff shall have a system for accounting for all children in the water.

#### **22VAC40-665-670. Daily activities.**

A. The variety of daily activities for all age groups shall be age and stage appropriate and provide opportunities for teacher-directed, self-directed, and self-chosen tasks and activities; a balance of active and quiet activities; indoor and outdoor activities; individual and group activities; and curiosity and exploration.

B. For a child who cannot move without help, staff shall offer to change the place and position of the child at least every 30 minutes or more frequently depending on the child's individual needs. For an awake infant not playing on the floor or ground a change in play space shall be provided by staff at least every 30 minutes or more often as determined by the individual infant's needs.

C. There shall be a flexible daily schedule for infants based on their individual needs.

D. Infants shall be allowed to sleep when needed.

1. When an infant is placed in his crib, he shall be placed on his back (supine).

2. When an infant is able to easily turn over from the back (supine) to the belly (prone) position and is placed in his crib, he shall still be put on his back but allowed to adopt whatever position he prefers. This applies unless otherwise directed by the infant's physician or health care provider in writing.

3. Resting or sleeping infants shall be individually checked every 15-20 minutes.

E. Infants shall be provided comfort when needed.

F. Staff shall provide frequent opportunities for infants to creep, crawl, toddle and walk.

G. Infants who cannot turn themselves over and are awake shall be placed on their stomachs for at least 30 minutes each day to facilitate upper body strength and to address misshapen head concerns.

H. Infants shall be protected from older children.

#### **22VAC40-665-680. Behavioral guidance.**

A. Behavioral guidance shall be constructive in nature, age and stage appropriate, and shall be intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, staff shall model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, support and:

1. Respect personal privacy;

2. Respect differences in cultural, ethnic, and family background;

3. Encourage decision-making abilities;

4. Promote ways of getting along;

5. Encourage independence and self-direction; and

6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;

2. It shall not be used with infants or toddlers;

3. The child shall be in a safe, lighted, well-ventilated place, and within sight and sound of staff; and

4. The child shall not be left alone inside or outside the center while separated from the group.

#### **22VAC40-665-690. Forbidden actions.**

The following actions or threats thereof are forbidden:

1. Physical punishment, including, but not limited to, striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment;

2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards, high chairs, and safety gates when used for their intended purpose with children preschool age or younger;

3. Punishment by another child;

4. Withholding or forcing of food, water, or rest;

5. Verbal remarks that are demeaning to the child;

6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

#### **22VAC40-665-700. Parental involvement and notifications.**

A. The vendor shall notify the parent immediately if a child is lost, requires emergency medical treatment or sustains a serious injury, or dies.

B. The vendor shall notify the parent by the end of the day of any known minor injuries.

C. The vendor shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;

2. Name of injured child;

3. Type and circumstance of the injury;

4. Staff present and treatment;

5. Date and time when parents were notified; and

6. Staff and parent signatures or two staff signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion or contact with prohibited food even if a reaction did not occur.

E. Staff shall promptly inform parents when persistent behavioral problems are observed and identified.

F. Parents shall be provided at least semiannually, in writing, information on their child's behavior, development, adjustment, and needs. This requirement does not apply to programs that operate 12 weeks or less a year.

G. Parents shall be informed of the reason for a child's termination from care.

H. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the child day program, in accordance with § 63.2-1813 of the Code of Virginia.

I. When children at the center have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

J. Parents shall be informed of the vendor's emergency preparedness plan.

#### **22VAC40-665-710. Furnishings, equipment and materials.**

A. Furnishings, materials, and equipment shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children under the age of three years.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. Play yards and portable cribs where used shall meet the Juvenile Products Manufacturers Association (JPMA) and the American Society for Testing and Materials (ASTM) requirements and shall not be used after recalled.

F. Cribs, cots, rest mats or beds shall be provided for children during the designated rest periods and shall not be occupied by more than one child at a time.

1. Cribs shall be provided for children from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot, rest mat or bed during the designated rest periods.

2. Cots, rest mats or beds shall be provided for children over 12 months of age.

G. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR parts 1219, 1220 and 1500).

2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children under twelve months of age while sleeping or resting including quilts, sheepskins or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants over five months of age or infants who are able to push up on their hands and knees.

M. Crib sides shall always be up and the fastenings secured when a child is in the crib.

N. Double decker cribs shall not be used.

**22VAC40-665-720. Bedding and linens for use while sleeping or resting.**

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material which can be cleaned and sanitized.

**22VAC40-665-730. Preventing the spread of disease.**

A. A child shall not be allowed to attend the center for the day if he has:

1. A temperature over 101°F;

2. Recurrent vomiting or diarrhea; or

3. Symptoms of a communicable disease.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the center as soon as possible after the signs or symptoms are observed; and

2. The child shall remain in a designated quiet area until leaving the center.

C. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

**22VAC40-665-740. Hand washing and toileting procedures.**

A. When hand washing, the following shall apply.

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.

2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces or urine.

3. Staff shall wash their hands with soap and running water before and after helping a child use the toilet or a diaper change, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding, and before preparing or serving food or beverages.

4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. Diapering requirements are as follows:

1. The diapering area shall be accessible and within the building used by children.

2. There shall be sight and sound supervision for all children when a child is being diapered.

3. The diapering area shall have:

a. Access to a sink with running warm water not to exceed 120°F;

b. Soap, disposable towels and single use gloves such as surgical or examination gloves;

c. A nonabsorbent surface for diapering or changing shall be used. For children younger than three years, this surface shall be a changing table or countertop designated for changing;

d. The appropriate disposal container as required by subdivision 6 of this subsection; and

e. A leak-proof covered receptacle for soiled linens.

4. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

5. Disposable diapers shall be used unless the child's skin reacts adversely to disposable diapers.

6. Disposable diapers shall be disposed in a leak-proof or plastic-lined storage system that is either foot-operated or used in such a way that neither the staff member's hand nor the soiled diaper touches an exterior surface of the storage system during disposal.

7. When cloth diapers are used, a separate leak-proof storage system as specified in subdivision 6 of this subsection shall be used.

8. The diapering surface shall be used only for diapering or cleaning children, and it shall be cleaned with soap and at least room temperature water and sanitized

after each use. Tables used for children's activities or meals shall not be used for changing diapers. Individual disposable barriers may be used between each diaper change. If the changing surface becomes soiled, the surface shall be cleaned and sanitized before another child is diapered.

9. Staff shall ensure the immediate safety of a child during diapering.

C. For every 10 children in the process of being toilet trained, there shall be at least one toilet chair or one child-sized toilet, or at least one adult sized toilet with a platform or steps and adapter seat.

1. The location of these items shall allow for sight and sound supervision of children in the classroom if necessary for the required staff-to-children ratios to be maintained.

2. Toilet chairs shall be emptied promptly and cleaned and sanitized after each use.

#### **22VAC40-665-750. Medication.**

A. The vendor may administer prescription medication to a child, with written permission of the parent, provided:

1. The medication is administered by a staff who meets the requirements of 22VAC40-665-580 I and J;

2. The staff administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

3. The staff administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

B. The vendor may administer over-the-counter or nonprescription medication to a child, with written permission from the parent, provided the medication is:

1. Administered by a staff 18 years of age or older;

2. Labeled with the child's name;

3. In the original container with the manufacturer's direction label attached; and

4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

C. When needed, medication shall be refrigerated.

D. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

E. The vendor shall keep a record of prescription and nonprescription medication given to children, which shall include the following:

1. Name of the child to whom medication was administered;

2. Amount and name of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Name of staff administering the medication;

5. Any adverse reaction; and

6. Any medication error.

#### **22VAC40-665-760. First aid and emergency supplies.**

A. The following emergency supplies shall be on each floor of each building used by children, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:

a. Scissors;

b. Tweezers;

c. Gauze pads;

d. Adhesive tape;

e. Bandages, assorted types and sizes;

f. An antiseptic cleansing solution/pads;

g. Digital thermometer; and

h. Single use gloves such as surgical or examination gloves.

2. An ice pack or cooling agent.

B. Each first aid kit shall be easily accessible to staff but not to children.

C. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight; and

2. One working, battery-operated radio.

**22VAC40-665-770. Procedures for emergencies.**

A. The vendor shall have a written emergency preparedness plan that addresses staff responsibility and facility readiness with respect to emergency evacuation, relocation, lockdown and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenario or scenarios, including but not limited to fire, severe storms, loss of utilities, natural disaster, chemical spills, intruder, and violence on or near the facility, and facility damage or other situations that may require evacuation, lockdown or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Evacuation procedures, including:

a. Scenario applicability;

b. Methods to alert staff and emergency responders;

c. Designated primary and secondary routes out of the building;

d. Designated assembly points away from the building;

e. Designated relocation site;

f. Methods to ensure all children are evacuated from the building, and if necessary, moved to a relocation site;

g. Methods to account for all children at the assembly point and relocation site;

h. Method of communication with parents after the evacuation or relocation;

i. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;

j. Method to ensure essential documents, including emergency contact information, attendance records, medications, and supplies are taken to the assembly point and relocation site; and

k. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

2. Shelter-in-place procedures, including:

a. Scenario applicability, inside assembly points, primary and secondary means of access and egress;

b. Method to account for all children at the safe location(s);

c. Method to ensure essential documents (attendance records, emergency contact information, etc.) and special health supplies are carried into the designated assembly points;

d. Method of communication after the shelter-in-place;

e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during shelter-in-place; and

f. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

3. Lockdown procedures, to include facility containment, including:

a. Methods to alert staff and emergency responders;

b. Methods to secure the facility and designated lockdown locations;

c. Methods to account for all children in the lockdown locations;

d. Methods of communication with parents and emergency responders;

e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and

f. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

4. Staff training requirements, drill frequency, and plan review and update.

5. Continuity of operations procedures to ensure that essential functions are maintained during an emergency; and

6. Other special procedures developed with local authorities.

C. Emergency evacuation and shelter-in-place procedures or maps shall be posted in a location conspicuous to staff and children on each floor of each building.

D. A 911 or local dial number for police, fire and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.

E. The vendor shall ensure that all staff receives training regarding emergency evacuation, relocation, shelter-in-place, and lockdown procedures on an annual basis, and at the end of each plan update.

F. The vendor shall ensure that the emergency plans are reviewed with any volunteers who work more than six hours per week prior to volunteering and on an annual basis.

**22VAC40-665-780. Emergency response drill.**

A. The emergency response drills shall be practiced, at a minimum:

1. Evacuation procedures shall be practiced at least monthly;
2. Shelter-in-place procedures shall be practiced twice a year; and
3. Lockdown procedures shall be practiced at least annually.

B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

**22VAC40-665-790. Nutrition and food services.**

A. Drinking water shall be accessible to all children.

B. When vendors provide meals or snacks, the following shall apply:

1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and sufficient portions.
2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

C. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;
2. The vendor shall have extra food or shall have provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and
3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

D. Food shall be prepared, stored, transported and served in a clean and sanitary manner.

E. When food is prepared that a child in care is allergic to, staff shall take steps to avoid cross contamination in order to prevent an allergic reaction.

F. Staff shall not serve prohibited food to a child.

G. Tables and high chair trays shall be sanitized before and after each use for feeding and cleaned at least daily.

**22VAC40-665-800. Special feeding needs.**

A. High chairs, infant carrier seats, or feeding tables shall be used for children under 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair or feeding tables, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated and labeled with the child's name.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula or breast milk shall not be heated or warmed directly in a microwave. Note: Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby jar and is labeled with the child's name, dated and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day.

**22VAC40-665-810. Transportation and field trips.**

A. If the vendor provides transportation, the vendor shall be responsible for care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.



C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and stated maximum number of passengers in a given vehicle are not exceeded;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;
4. At least one staff member or the driver always remains in the vehicle when children are present; and
5. Staff has a list of the names of the children being transported and allergy care plans, if necessary.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Children shall cross streets at corners or crosswalks or other designated safe crossing point if no corner or crosswalk is available.

G. Staff shall verify that all children have been removed from the vehicle at the conclusion of any trip.

#### **22VAC40-665-820. Animal and pets.**

Animals that are kept on the premises of the center shall be vaccinated, if applicable, against diseases which present a hazard to the health or safety of children.

#### **22VAC40-665-830. Evening and overnight care.**

- A. All supervision requirements apply during evening and overnight care.
- B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.
- C. For overnight care, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.
- D. In addition to 22VAC40-665-720 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.
- E. When children are eight years of age or older, boys and girls shall have separate sleeping areas.
- F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.
- G. When bath towels are used, they shall be assigned for individual use.
- H. For children in evening and overnight care, quiet activities and experiences shall be available immediately before bedtime.

FORMS (22VAC40-665)

**Child Care Subsidy Program Child Care Center Vendor Agreement, 032-12-0047-01 (rev. 11/16)**

**Child Care Subsidy Program Family Day Home Vendor Agreement, 032-12-0046-00 (rev. 11/16)**

DOCUMENTS INCORPORATED BY REFERENCE (22VAC40-665)

**Child Care and Development Fund (CCDF) Plan for FFY 2016-2018, effective 10/01/15**