

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 568

An Act to amend and reenact §§ 63.2-608, 63.2-609, 63.2-611, and 63.2-612 of the Code of Virginia, relating to the Virginia Initiative for Employment Not Welfare program.

[S 1133]

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-608, 63.2-609, 63.2-611, and 63.2-612 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-608. Virginia Initiative for Employment Not Welfare (VIEW).

A. The Department shall establish and administer the Virginia Initiative for Employment Not Welfare (VIEW) to reduce long-term dependence on welfare, to emphasize personal responsibility and to enhance opportunities for personal initiative and self-sufficiency by promoting the value of work. The Department shall endeavor to develop placements for VIEW participants that will enable participants to develop job skills that are likely to result in independent employment and that take into consideration the proficiency, experience, skills and prior training of a participant.

VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients and shall include a written agreement of personal responsibility requiring parents to participate in work activities while receiving TANF, earned-income disregards to reduce disincentives to work, and a limit on TANF financial assistance.

VIEW shall require all able-bodied recipients of TANF who do not meet an exemption ~~and who are not employed within 90 days of receipt of TANF benefits~~ to participate in a work activity. VIEW shall require eligible TANF recipients to participate in unsubsidized, partially subsidized or fully subsidized employment *or other allowable TANF work activity as defined by federal law* and enter into an agreement of personal responsibility. ~~If recipients cannot be placed in an unsubsidized or subsidized job, they shall be required to participate in a six-month community work experience placement. Upon completion of the initial six-month work requirement, participants may receive education and training in conjunction with continued work experience to make them more employable.~~

B. To the maximum extent permitted by federal law, and notwithstanding other provisions of Virginia law, the Department and local departments may, through applicable procurement laws and regulations, engage the services of public and private organizations to operate VIEW and to provide services incident to such operation.

C. All VIEW participants shall be under the direction and supervision of a case manager.

D. The Department shall ensure that participants are assigned to one of the following ~~employment categories in priority order not less than work activities within 90 days after the approval of TANF eligibility determination assistance:~~

1. Unsubsidized private-sector employment;
2. Subsidized employment, as follows:

a. The Department shall conduct a program in accordance with this section ~~and any applicable federal waivers~~ that shall be known as the Full Employment Program (FEP). FEP replaces TANF ~~and food stamp benefits~~ with subsidized employment. Persons not able to find unsubsidized employment who are otherwise eligible for ~~both TANF and food stamp benefits~~ *shall may* participate in FEP unless exempted by this chapter. FEP shall assign participants to ~~and subsidize subsidized~~ wage-paying private-sector jobs designed to increase the participants' self-sufficiency and improve their competitive position in the workforce.

b. The Department shall administer a wage fund that shall be used exclusively to meet the necessary expenditures of FEP. Funds to operate FEP, drawn from funds appropriated for expenditure by or apportioned to Virginia for operation of the TANF and food stamp programs, shall be deposited in this pool. All payments by the Department to participating employers for FEP participants shall be made from the pool.

e b. Participants in FEP shall be placed in full-time employment when appropriate and shall be paid by the employer at an hourly rate not less than the federal or state minimum wage, whichever is higher. For each participant hour worked, the Department shall reimburse the employer the amount of the federal or state minimum wage and costs up to the available amount of the participant's combined value of TANF ~~and food stamps~~. At no point shall a participant's spendable income received from wages and tax credits be less than the value of TANF ~~and food stamps~~ received prior to the work placement.

d c. Every employer subject to the Virginia unemployment insurance tax shall be eligible for assignment of FEP participants, but no employer shall be required to utilize such participants. Employers shall ensure that jobs made available to FEP participants are in conformity with § 3304 (a) (5) of the

Federal Unemployment Tax Act. FEP participants cannot be used to displace regular workers.

e d. FEP employers shall:

- (i) Endeavor to make FEP placements positive learning and training experiences;
- (ii) Provide on-the-job training to the degree necessary for the participants to perform their duties;
- (iii) Pay wages to participants at the same rate that they are paid to other employees performing the same type of work and having similar experience and employment tenure;
- (iv) Provide sick leave, holiday and vacation benefits to participants to the same extent and on the same basis that they are provided to other employees performing the same type of work and having similar employment experience and tenure;
- (v) Maintain health, safety and working conditions at or above levels generally acceptable in the industry and no less than those in which other employees perform the same type of work;
- (vi) Provide workers' compensation coverage for participants;
- (vii) Encourage volunteer mentors from among their other employees to assist participants in becoming oriented to work and the workplace; and
- (viii) Sign an agreement with the local department outlining the employer requirements to participate in FEP. All agreements shall include notice of the employer's obligation to repay FEP reimbursements in the event the employer violates FEP rules.

f e. As a condition of FEP participation, employers shall be prohibited from discriminating against any person, including program participants, on the basis of race, color, sex, national origin, religion, age, or disability;

3. Part-time or temporary employment; ~~or~~

4. Community work experience, as follows:

a. The Department and local departments shall work with other state, regional and local agencies and governments in developing job placements that serve a useful public purpose as provided in § 482 (f) of the Social Security Act, as amended. Placements shall be selected to provide skills and serve a public function. VIEW participants shall not displace regular workers.

b. The number of hours per week for participants shall be determined by combining the total dollar amount of TANF and food stamps and dividing by the minimum wage with a maximum of a work week of 32 hours, of which up to ~~eight~~ 12 hours of employment-related education and training may substitute for work experience employment; *or*

5. *Any other allowable TANF work activity as defined by federal law.*

E. Notwithstanding the provisions of subsections A and D, if a local department determines that a VIEW participant is in need of job skills and would benefit from immediate job skills training, it may, ~~with the participant's consent, exempt the participant from job search requirements and place the participant in a general educational development (GED) program or a career and technical education program targeted to at skills required for particular employment opportunities in the locality if the participant meets two or more of the criteria specified in this subsection.~~ Eligible participants include those with problems related to obtaining and retaining employment, such as participants (i) with less than a high school education, (ii) whose reading or math skills are at or below the eighth grade level, (iii) who have not retained a job for a period of at least six months during the prior two years, or (iv) who are in a treatment program for a substance abuse problem or are receiving services through a family violence treatment program. ~~The career and technical education program shall be for a minimum of 30 hours per week. Prior to placing the VIEW participant in the career and technical program, the local department shall have a memorandum of understanding with an employer that such participant will be placed, if qualified and the employer has an opening, in a job with the employer at the conclusion of the program. The VIEW participant shall be required to work an average of eight hours per week during the career and technical education program in part-time or temporary employment or community work experience. The VIEW participant may continue in the a GED program or career and technical education program for as long as the local department determines he is progressing satisfactorily and to the extent permitted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), as amended.~~

F. Participants may be reevaluated after a period determined by the local department and reassigned to another work component. In addition, the number of hours worked may be reduced by the local department so that a participant may complete additional training or education to further his employability.

G. Local departments shall be authorized to sanction ~~participants~~ *parents* up to the full amount of the TANF grant ~~and food stamps allotment~~ for noncompliance, *unless good cause exists.*

H. VIEW participants shall not be assigned to projects that require that they travel unreasonable distances from their homes or remain away from their homes overnight without their consent.

Any injury to a VIEW participant arising out of and in the course of community work experience shall be covered by the participant's existing Medicaid coverage. If a community work experience participant is unable to work due to such an accident, his status shall be reviewed to determine whether he is eligible for an exemption from the limitation on TANF financial assistance.

A community work experience participant who becomes incapacitated for 30 days or more shall be

eligible for TANF financial assistance for the duration of the incapacity, if otherwise eligible.

The Board shall adopt regulations providing for the accrual of paid sick leave or other equivalent mechanism for community work experience participants.

§ 63.2-609. VIEW exemptions.

The following TANF recipients shall be exempt from mandatory participation in VIEW and shall remain eligible for TANF financial assistance:

1. Any individual, including all minor caretakers, under sixteen years of age;
2. Any individual at least sixteen, but no more than nineteen years of age, who is enrolled full-time in elementary or secondary school, including career and technical education programs. The career and technical education program must be equivalent to secondary school. ~~Once the individual loses this exemption, he cannot requalify for the exemption, even if he returns to school, unless the case is closed and reopened or he becomes exempt for another reason.~~ Whenever feasible, such recipients should participate in summer work;
3. Any individual who is unable to participate because of a temporary medical condition that is preventing ~~entry into~~ employment or training, as determined by a physician *or other qualified medical professional* and certified by a written medical statement. Such an exemption shall be reevaluated every sixty days to determine whether the person is still exempt;
4. Any individual who is ~~incapacitated disabled~~, as determined by receipt of Social Security Disability Benefits or Supplemental Security Income. ~~This exemption shall not be granted to either parent in a TANF-UP case; eligibility shall be evaluated for regular TANF cases on the basis of the parent's incapacity;~~
5. Any individual sixty years of age or older;
6. Any individual who is the sole caregiver of another member of the household who is ~~incapacitated disabled~~ as determined by receipt of Social Security Disability Benefits or Supplemental Security Income *or who is incapacitated by* another condition as determined by the Board and whose presence is essential for the care of the other member on a substantially continuous basis;
7. A parent or caretaker-relative of a child under ~~eighteen~~ 12 months of age who personally provides care for the child. A parent of a child not considered part of the TANF public assistance unit under § 63.2-604 may be granted a temporary exemption of not more than six weeks after the birth of such child;

~~8. A female who is in her fourth through ninth month of pregnancy as determined by a written medical statement provided by a physician or by a registered nurse who is the physician's designee or licensed nurse practitioner;~~

9. Children receiving Title IV-E Foster Care;

~~10. Families where the primary caretakers of a child or children are legal guardians, grandparents, or other persons standing in loco parentis and are not the adoptive or biological parents of the child.~~

In a TANF-UP case, both parents shall be referred for participation unless one meets an exemption; only one parent can be exempt. If both parents meet an exemption criterion, they shall decide who will be referred for participation.

§ 63.2-611. Case management; support services; transitional support services.

A. The Commissioner, through the local departments, with such funds as appropriated, shall offer families participating in VIEW intensive case management services throughout the family's participation in VIEW. Case management services shall include initial assessment of the full range of services that will be needed by each family including testing and evaluation, development of the individualized agreement of personal responsibility, and periodic reassessment of service needs and the agreement of personal responsibility. It shall be the goal of the Department to have a statewide intensive case management ratio not higher than the statewide average ratio in Title IV-F of the Social Security Act Job Opportunities and Basic Skills Training Program State Plan as the ratio existed on July 1, 1995. ~~The Department shall include in its annual report to the Governor and General Assembly an evaluation of program effectiveness statewide and by locality, including an evaluation of case management services.~~

B. Local departments are authorized to provide services to VIEW families throughout the family's participation in VIEW subject to regulations adopted by the Board, including:

1. Child care for the children of participants if:
 - a. The participant is employed and child-care services are ~~essential to~~ *required to enable* the continued employment of the participant;
 - b. Child-care services are required to enable a participant to receive job placement, job training or education services; or
 - c. The participant is otherwise eligible for child care pursuant to Board regulations.
 2. Transportation that will enable parental employment or participation in services required by the agreement of personal responsibility.
 3. Job counseling, education and training, and job search assistance consistent with the purposes of VIEW.
 4. Medical assistance.
- C. A participant whose TANF financial assistance is terminated, either voluntarily or involuntarily,

shall receive the following services for up to twelve months after termination, if needed:

1. Assistance with child care if such assistance enables the individual to work;
2. Assistance with transportation, if such transportation enables the individual to work; and
3. Medical assistance, including transitional medical assistance for families with a working parent who becomes ineligible for TANF financial assistance because of increased earnings, ~~unless (i) medical insurance is available through the parent's employer or (ii) family income exceeds 185 percent of the federal poverty level according to policies of the Virginia Department of Medical Assistance Services;~~ and
4. *Financial assistance of \$50 per month, if the participant is employed and is working at least 30 hours per week or more at the time of TANF closure and remains employed and continues to work at least 30 hours per week or more.*

D. The Department or local departments may purchase or otherwise acquire motor vehicles from the centralized fleet of motor vehicles controlled by the Commonwealth Transportation Commissioner under Article 7 (§ 2.2-1173 et seq.) of Chapter 11 of Title 2.2 and sell or otherwise transfer such vehicles to TANF recipients or former recipients. Purchases, sales, and other transfers of vehicles under this subsection shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), or the provisions of §§ 2.2-1124, 2.2-1153, 2.2-1156, and 2.2-1177 relating to the sale, purchase, and transfer of surplus motor vehicles and other surplus state property.

E. Nothing in this section shall be construed or interpreted to create a cause of action or administrative claim based upon a right or entitlement to any specific services or an exemption or waiver from any provision of VIEW.

§ 63.2-612. Time limit on the receipt of TANF.

Unless otherwise exempt, VIEW participants and their families may receive TANF financial assistance for a maximum of twenty-four months only, subject to § 63.2-613. VIEW participants and their families may receive TANF financial assistance, if otherwise eligible, after a subsequent period of twenty-four months ~~without (i) participation in VIEW, (ii) the receipt of TANF financial assistance, or (iii) the receipt of transitional assistance.~~

The local department shall notify a VIEW participant and his family that his TANF financial assistance is scheduled to be terminated as provided in this section. Notice shall be given sixty days prior to such termination and shall inform the VIEW participant and his family of the exception regulations adopted by the Board and the procedure to be followed by the VIEW participant and his family if he believes that he is entitled to an extension of benefits.