

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11004

### FINAL

#### PUBLIC NOTICE

##### **11004.7 Determination of the Child Care Parent Fee and Fee Waiving Situations**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, notice is hereby given that the proposed regulation published in Volume 14, Issue 6, Number 533 of the December 1, 2010 issue of the *Delaware Register of Regulations* is withdrawn.

##### **Summary of Notice of Withdrawal of a Proposed Regulation**

On December 1, 2010, the Division of Social Services (DSS) published for public comment a proposal to amend Child Care Subsidy Program rules in the Division of Social Services Manual (DSSM). The purpose of this rule revision is to reduce the number of situations in which a family does not have a parent fee. The proposal updates **DSSM 11004.7, *Determination of the Child Care Parent Fee and Fee Waiving Situations***, to eliminate specific situations which allow the child care parent fee to be waived. Specifically, all families receiving subsidized child care will have a parent fee except: 1) Families active with and referred by DFS; and 2) Teen parents attending high school or high school equivalent. Effective April 1, 2011, the proposed rule published on December 1, 2010 (14 **DE Reg.** 533) is withdrawn.

DSS received approximately 13 public comments from the child care community in response to the December 1, 2010 proposed rule. Following are three representative examples of the type of comments that were received.

##### **Representative Example #1**

The proposed change will require that all families (except families referred by Division of Family Services, including foster families, and teen parents) to pay a co-pay. This proposed change eliminates the previous exemptions for the poorest families. I am concerned that this policy change will increase the burden on families and providers, arguably the two groups with the fewest resources to contribute to the problem of financing the state's subsidized child care system. I urge you to reconsider this policy change and not adopt it as currently proposed.

##### **Representative Example #2**

I am distressed that DSS has proposed to "reduce the number of situations in which a family does not have a parent fee" as a way "to continue providing services to each family that is eligible for a child care subsidy" without providing adequate information about the impact on children, families and early care and education providers. According to the proposal, DSS is eliminating three (3) of the five (5) conditions in which child care fees can be waived. Families enrolled in TANF and General Assistance programs, as well as families under an "excessive financial burden" are required to contribute to their childcare subsidy. It is not clear how the "parent fee" will be calculated or assessed. These families are already in an economically fragile situation with no guarantee they will be able to pay the "parent fee" or increase in the "parent fee".

In addition, DSS has failed to consider the additional stress and impact on early care and education programs. Programs serving these economically fragile families will be impacted in terms of the time collecting fees and ensuring compliance, while endeavoring to provide a quality early care and education experience with inadequate funds.

I while I understand funding is an ongoing issue in these difficult economic times, I strongly urge DSS to consider alternate ways to in which to address the limits in funding. The current proposal puts undo additional stress on our most vulnerable children and families and further stress on an also vulnerable early care and education system. I respectfully suggest that DDS consider changing policies such as the one that mandates no

waiting list for the Child Care Subsidy Program or possibly reduce the threshold at which families are eligible. While I truly dislike making such suggestions, I truly believe they are a better alternative to what is being proposed and when analyzed would have a far less negative impact on children, families and the early care and education system.

The Child Care Subsidy Program is designed to reduce the financial burden of low-income families that need child care services in order to maintain employment and move toward self-sufficiency. Eliminating child care fee waivers as proposed will have far reaching ramifications which I do not believe have been fully considered or discussed. In addition to my concern about the proposed change, I am also concerned about the limited amount of time given to comment, as well as the methods utilized to secure comments. I don't imagine the parents who will be most affected by this proposal were given notice about the proposed change in order to voice their concerns.

I appeal to DSS to exercise caution in implementing any changes and take more time to consider the unintended consequences. I strongly believe that DSS should not implement the policy changes proposed regarding child care subsidies. Please take more time to consider other alternatives which do not have the extensive repercussions as those associated with eliminating the child care fee waivers for families in dire need of them.

### **Representative Example #3**

First, consistent with Secretary Landgraf's FY 12 budget presentation, there is ostensibly a shortfall in funds for the Child Care Subsidy Program since DHSS is requesting \$3 million as a door opener.

Second, the apparent effect of limiting fee waivers would be twofold: 1) deterring participation in the Child Care Subsidy Program by caretakers no longer eligible for fee waiver; and 2) increasing provider compensation since some currently exempt caregivers would be required to pay the fee to providers. Parenthetically, the fee can be significant. Although SCPD lacks a copy of the 2010-2011 scale, the attached 2008-2009 scale is instructive. See also 16 DE Admin. Code 11004.7.1 which contains consistent regulatory table. A single parent with income at 100% of the federal poverty level would pay 21% of the costs of care.

Third, by deterring participation by some caregivers, DSS is undermining one of the Department's "top priorities", i.e., creating employment opportunities. See attached excerpt from Secretary's FY 12 budget presentation. The availability of child care is an important support for persons seeking employment.

Since the proposed regulation restricts fee waivers, [we] cannot provide its endorsement. In addition, [we] recommend that DSS add the following exceptions in the new regulation:

- "3. Homeless families as defined in §11003.7.2." Such families would generally be extremely needy and without funds to pay fees.
- "4. Families seeking care of 13 to under 19 year old children physically or mentally incapable of caring for themselves."

See 16 DE Admin. Code 11003 and 11003.7.8. Such children may be extremely needy and benefit from socialization within day care settings rather than isolation at home.

### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the December 2010 Register of Regulations should be withdrawn.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend existing Child Care Subsidy Program rules in the Division of Social Services Manual regarding *Determination of the Child Care Parent Fee and Fee Waiving Situations* is withdrawn effective April 1, 2011.

Rita M. Landgraf, Secretary, DHSS

### **DSS NOTICE OF WITHDRAWAL OF PROPOSED REGULATION #11-12 REVISION:**

#### **11004.7 Determination ~~Of The~~ of the Child Care Parent Fee and Fee Waiving Situations**

45 CFR §§98.20 and 98.42

Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.

Child care fees may be waived if the family meets one of the five (5) conditions below.

On a case by case basis, families active with and referred by the Division of Family Services (DFS) including foster care families. This requires supervisory approval.

Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.

Caretakers in Category 31 caring for a child/children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).

When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below 40% of the federal poverty level. Deductions are limited to:

- rent, mortgage, lot rent;
- any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);
- actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fees and past due amounts are not included.
- telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;
- un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)

**EXAMPLE:-**

A family of three has gross monthly income of \$1,300.00. The parent fee for this family would be 16% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.

Total income per month equals: \$1,300.00

Total expenses are: \$85.00

After deductions: \$515.00

\$515.00 is less than \$553.00, 40% of the federal poverty level for a family of 3, so this family can have the parent fee waived.

**EXAMPLE:-**

A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.

Total income per month equals: \$2,203.00

Total expenses are: \$785.00

After deductions: \$1,418.00

\$1,418.00 is more than \$666.00, 40% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.

Teen parents 18 years old or younger attending high school or a high school equivalent.

All requests to waive the fee must be documented in the case file and be approved by the unit supervisor.

As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.

See Administrative Notice: A-08-2004 Waiving Child Care Fee

A-13-99 Child Care Fees/ Waiving Fees For Caretakers of ABC or GA Children

Families are required to contribute to the cost of child care services. All families receiving subsidized child care will have a parent fee except:

1. Families active with and referred by the Division of Family Services (DFS) including foster care families.
  2. Teen parents 18 years old or younger attending high school or a high school equivalent.
- 14 DE Reg. 1078 (04/01/11) (Final)**