

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 11006

FINAL

ORDER

Child Care Subsidy Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February 2020 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2020 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after April 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual regarding the Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement.

Statutory Authority

- 45 CFR §98.45 (l)(2)(iii)
- 45 CFR §98.40
- 11 Del. C. c. 85
- 31 Del. C. c. 3

Background

DSS is proposing to amend DSSM 11006.4.1 Paying for Absent Days and Holidays in Child Care to update the formatting of the policy and to add information about how the new child care copayment factors into payments to providers for absent days for authorized children.

DSS is proposing to amend DSSM 11006.5.1 Terminating Providers and Self-Arranged Clients to update the formatting and clarify the text of the policy. DSS changed the health and safety training hours and timeframe for relative care providers to reflect the current requirements. DSS also added a separate section explaining the reasons DSS will terminate services to parents and caretakers who have self-arranged child care.

Purpose

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The proposed rules explain the guidelines for when DSS will pay Purchase of Care (POC) providers for absent days and holidays for authorized child care services. The proposed rules also explain when DSS will terminate, from the Child Care Subsidy Program, a provider, a relative child care provider, or a parent or caretaker who has self-arranged child care.

Summary of Proposed Changes

Effective for services provided on and after April 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual regarding the Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on March 2, 2020.

Fiscal Impact Statement

There is no fiscal impact associated with this policy change.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two commenters suggested that DSS include specific language in the regulation for the payment of more than five absences in one month in certain circumstances when the absences are directly related to a child or parent's disability or other serious health condition.

Agency Response: DSS will amend DSSM 11006.4.1 "Paying for Absent Days and Holidays in Child Care" to address the recommendation for specific language addressing absences in excess of five days due to a child's, a parent's, or a caretaker's disability or serious medical condition.

Comment: One commenter suggested the rules placing a limit of six major holidays per year that the provider has chosen. We do not understand why this is limited to six major holidays, rather than all of the major holidays.

Agency Response: Delaware elected to use the standard major holidays with the opportunity for providers to choose the holidays to accommodate their needs.

Comment: One commenter questioned why DSS will only pay for absent days "after" the family's copayment has been paid, rather than simply being authorized.

Agency Response: A family is responsible to make payment for child care services until the family has exhausted their assigned maximum copayment amount; this may include paying for absent days. If a family reaches their maximum copayment obligation and the child is absent after that, DSS will pay for absent days if the child's absent days have not exceeded five days in the month.

Comment: One commenter expressed concern that relative care providers will have difficulty completing the 28 hours of mandatory health and safety training within 12 months. We believe that a "good cause" provision should be added that will allow payments to continue for such relative providers if they have "good cause" for failing to complete the training within the required time.

Agency Response: The training hours have decreased from 47 hours to 28 mandatory health and safety training hours with the reauthorization of the Child Care and Development Block Grant. DSS fully understands that a hardship may occur and is in the process of creating an online training for relative care providers. The online training will allow relative care providers more flexibility in completing the required training hours.

Comment: One commenter expressed concerned about the breadth of the criminal history exclusion. Such exclusions should only apply to the extent that state law requires such an exclusion.

Agency Response: The requirement on unsuitable criminal history is within the scope of State and Federal statutes. As stated in DSSM 11006.5.1 (2)(B), DSS uses the Office of Child Care Licensing's guidelines and Title 11, Chapter 85 of the Delaware Code to determine unsuitable criminal history.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Community Legal Aid Society, Inc. (CLASI)
- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the February 2020 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 Del.C. §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement, is adopted and shall be final effective April 11, 2020.

3/10/2020

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,
DHSS

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

11006.4.1 Paying for Absent Day Policy Days and Holidays in Child Care

45 CFR 98.45(l)(2)(iii)

~~DSS pays for up to five absent days per month. The number of paid absent days per month is the same as the number of days authorized for care in one week (up to a maximum of five days per month). The specific number of paid absent days is indicated on each child's Authorization Form.~~

~~Payment may be made for the major holidays listed in the contract for any child who attended at least one day during the month.~~

~~No payment is made to a provider for a holiday that occurs before the start date of the authorization at that provider's site.~~

This policy explains provider payments for absent days and holidays during authorized child care.

- 1. The number of paid absent days per month for a child is the same as the number of days authorized for care in one week, up to a maximum of five days per month.**
- 2. DSS will pay for absent days for an authorized child after the family's copayment has been paid and there is a remaining balance due to the provider.**
- 3. DSS will pay for up to five absent days per month for an authorized child who does not have an assigned copayment.**
- [4. DSS may pay for more than five absent days per month for a child who is authorized for Special Needs Child Care and is absent due to the eligible child's or the eligible parent's or caretaker's verified disability or serious health condition.**

~~**4.5.]DSS will pay for the six major holidays per year that the provider has chosen. The authorized child must be attending the provider's site prior to the date of the holiday for the provider to receive payment for the holiday.**~~

13 DE Reg. 100 (07/01/09)

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

11006.5.1 Terminating Providers and Self-Arranged Clients

45 CFR 98.40, 11 Del.C. Ch. 85, 31 Del.C. Ch. 3

This policy applies to all Purchase of Care (POC) providers, including and clients who have self-arranged clients child care.

~~DSS May Terminate Providers with Just Cause~~

~~1. The Division of Social Services may terminate any provider or self-arranged client from the Child Care Subsidy Program (Purchase of Care) if she or he:~~

- 1. DSS may terminate a provider from the POC program if the provider:**

- A. Has a suspended, ~~closed~~ closed, or terminated Office of Child Care Licensing (OCCL) ~~license~~ license;
- B. Commits fraud against ~~DHSS~~ DHSS;
- C. Charges fees not allowed by ~~the Child Care Contract, Division policy, or a Division approved waiver~~; DSS has failed to reimburse ~~those fees and/or unallowable child care fees~~, or has repeated offenses in this ~~area~~ area;
- D. Charges ~~Purchase of Care~~ POC Plus fees when ~~she or he~~ the provider is not a DSS authorized POC Plus ~~provider~~ provider;
- E. Does not keep accurate records per the DSS ~~Child Care Contract~~; ~~has had repeated offenses~~, POC contract, has been counseled and has failed to meet the requirements of a corrective action plan agreed upon with the ~~Child Care Monitor~~ POC program, or has repeated offenses in this area; or
- F. Does not keep an open bank account to receive direct deposit payments from the ~~Child Care Subsidy Program~~ POC program. ~~Direct deposit is mandatory for all DSS child care subsidy providers effective May 1, 2008.~~

2. ~~In addition to the items mentioned above, the Division of Social Services may terminate any relative care provider from the Child Care Subsidy Program (Purchase of Care) if she or he:~~

2. In addition to the conditions listed in section 1, DSS may terminate a relative care provider from the POC program if the relative care provider:

- A. Does not complete ~~the 47~~ 28 hours of mandatory health and safety training hours within 48 12 months of becoming a relative ~~or non-relative~~ care provider, or the training requirements as outlined in the initial POC orientation ~~session~~ session; or
- B. Has an unsuitable criminal ~~history~~ history, or a member of the provider's household has an unsuitable criminal history. DSS uses ~~Office of Child Care Licensing (OCCL)~~ the OCCL's guidelines and Title 11, Chapter 85 of the Delaware Code to determine unsuitable criminal history.

3. DSS may terminate a parent or caretaker who has self-arranged child care from the POC program if the parent or caretaker:

- A. Submits fraudulent attendance records to DSS;
- B. Does not keep an open bank account to receive direct deposit payments from the POC program as required to participate in self-arranged child care; or
- C. Does not attend the mandatory orientation to become a self-arranged client.

13 DE Reg. 1211 (03/01/10)

15 DE Reg. 223 (08/01/11)

23 DE Reg. 878 (04/01/20) (Final)