

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PROPOSED

PUBLIC NOTICE

Purchase of Care (POC) - Licensed Exempt Providers

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to: Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by 4:30pm on March 3, 2017. Please identify in the subject line: Purchase of Care (POC) - Licensed Exempt Providers.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.*

Statutory Authority

- Pub. L. 113-186; *Child Care and Development Block Grant (CCDBG) Act of 2014*
- 42 USC §9858; *Child Care and Development Block Grant, authorization of appropriations,*
- §418 of the Social Securities Act (42 USC §618); *Funding for child care*
- 45 CFR 98; *Child Care and Development Fund*
- 81 FR 67438; *Federal Register Child Care Development Fund*

Background

On November 19, 2014, President Barack Obama signed the (Pub. L. 113-186) into law. The Child Care and Development Block Grant (CCDBG) Act authorizes the Child Care and Development Fund (CCDF), which is the primary Federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children. The CCDBG Act includes provisions to: (1) Protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; (3) provide equal access to stable, high quality child care for low-income children; and (4) enhance the quality of child care and the early childhood workforce. The law requires providers receiving CCDF funds (including those that are license-exempt) to be monitored, at least annually, to determine whether health and safety practices and standards are being followed in the child care setting, including a pre-licensure visit for licensed providers. Among other things, the law allows agencies to develop alternative monitoring requirements for CCDF-funded care provided in the child's home and to exempt relative caregivers from the monitoring requirement, if the agency chooses to do so.

The 2016 Child Care and Development Fund Final Rule updates regulations to incorporate, and in some cases clarify, changes made through the Child Care and Development Block Grant Act of 2014. The rule applies to states, territories and tribes administering CCDF and incorporates and clarifies changes made through the bipartisan CCDBG Act. It also is reflective of helpful comments received on the Notice of Proposed Rulemaking (NPRM) published in December 2015. Throughout the final rule, ACF responds to the more than 150 comments received during the public comment period and makes changes where appropriate. Where possible, it also aligns child care requirements with new Head Start regulations, including certain requirements for background checks and health and safety trainings for staff.

Summary of Proposal

DSS published this proposed regulation in the December 2016 Delaware *Register*. These regulations were erroneously published under the Division of Medicaid and Medical Assistance. In order to promote transparency and ensure that all applicable parties have an opportunity to participate in the public comment process, DSS has chosen to republish these regulations for further public review and comment.

Purpose

The purpose of this proposal is to revise language in the Delaware Social Services Manual (DSSM) so as to be compliant with changes in the Child Care and Development Fund Final Rule. The final rule requires that all providers receiving Purchase of Care (POC) funding must now to be licensed, including those that were previously license exempt, in order to continue receiving POC funding.

Summary of Proposed Changes

If implemented as proposed, the amendment to the DSSM will accomplish the following, effective May 11, 2017:

Modify DSSM 11004.4.1, Explanation of Certificates, and DSSM 11004.9, Authorizing Child Care Services, to align with the final rule.

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 Delaware Social Services Manual provisions regarding Purchase of Care Licensing Requirements. Comments must be received by 4:30 p.m. on March 3, 2017.

Fiscal Impact Statement

Reauthorization of the Child Care Development Block Grant is requiring that child care providers that receive purchase of care funding to become licensed. A revision of current policy in regards to licensed exempt providers will be required. This is a revision of our current policies and will not require additional funding.

DSS PROPOSED REGULATION #17-004a REVISION:

11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

A. Parents/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.

B. Licensed Care: ~~In Delaware, a~~ All family child care homes and child care centers must have a license to operate in Delaware. Do not allow a parent to select an unlicensed family, or center child care provider.

C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:

1. persons who come into the child's own home to care for the parent/caretaker's child,
2. relatives who provide care in their home for the parent/caretaker's child;
3. ~~public or private school care,~~
4. ~~preschools and kindergarten care, and~~
5. ~~before and after school care programs.~~

6. Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
2. safe and clean building premises,
3. providers and those 18 and older who live in the home where care is being provided must not have any

record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and

4. relatives who provide care cannot be part of the welfare grant.

D. Once parents/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parents/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

If the provider contracted purchase of care slots are full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/ Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.

F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parents/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.

G. Allow parents/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parents/caretakers will need to obtain a new certificate if they still wish to receive service.

H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

I. The client has 60 days from confirmation of eligibility to provide the DSS Case Manager with the name of his/her provider. If the client fails to provide this information his/her case will close.

8 DE Reg. 1153 (02/01/05)

9 DE Reg. 572 (10/01/05)

13 DE Reg. 1088 (02/01/10)

DSS PROPOSED REGULATION #17-004b REVISION:

11004.9 Authorizing Child Care Services

45 CFR 98.11

All child care services must be authorized before parents/caretakers can receive subsidized child care. Parents/caretakers can choose any provider who is: ~~either~~

A. licensed, licensed exempt, or self arranged; and

B. approved to receive purchase of care.

No parent/caretaker can receive POC funds to provide child care services to their own children in a home or any other child care facility where the parent/caretaker provides direct care to that child. These parents may be able to get child care assistance if their children are placed in another child care setting.

Authorizations always start after service has been approved. The exact date is selected by the parent/caretaker. An authorization ends on the last day of the month of the authorization period. At no time can the authorization period exceed the review date. Child care may be authorized only for the days and hours that parents/caretakers need care. The types of care that can be authorized are part time (P), full day (X), and day and a half (T) ~~and double time (D) which is two days~~. All licensed and licensed exempt child care providers can receive up to five (5) absent days, depending on the number of days the child is authorized to attend. Children in self arranged care and children authorized for seven (7) days do not receive absent days.

9 DE Reg. 572 (10/01/05)

14 DE Reg. 182 (09/01/10)

20 DE Reg. 614 (02/01/17) (Prop.)