

# 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** 11003

### FINAL

### ORDER

#### Defining Family Size For Child Care

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services ("DSS") initiated proceedings to amend the Division of Social Services Manual ("DSSM") regarding Child Care Subsidy Program, specifically, to define family size for child care. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the October 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 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 January 11, 2021, the Department/DSS proposes to amend the Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to define family size for child care.

#### **Statutory Authority**

45 CFR 98.20

#### **Background**

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance.

DSS amended DSSM 11003.9.3 "Defining Family Size for Child Care" to include the current criteria that DSS staff are to follow to calculate the family size, which is used to determine the family's financial eligibility and copayment for child care. DSS changed the formatting of the policy so that the policy is easier for DSS staff, stakeholders, and the public to understand.

#### **Summary of Proposal**

##### *Purpose*

The purpose of the proposed change is to explain how DSS groups parents and children together to determine eligibility for Purchase of Care. The family size includes parents and minor children who live together and whose needs and incomes are considered together for child care subsidy.

##### *Summary of Proposed Changes*

Effective for services provided on and after January 11, 2021, the Department/DSS proposes to amend Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to define family size for child care.

##### *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 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 November 2, 2020.

#### **Fiscal Impact Statement**

DSS amended the eligibility policy to provide clear and accurate directions on the eligibility requirements for the Child Care Subsidy Program. This policy is currently in place and there are no new financial responsibilities associated with the amended eligibility policy.

## **Summary of Comments Received with Agency Response and Explanation of Changes**

The following summarized comments were received:

**Comment:** One commenter recommended including examples.

**Agency Response:** DSS has amended the policy to include examples of different family situations.

**Comment:** One commenter suggested to make it clear that in situations where the caretaker is not a relative, eligibility still exists and only the income of the child is considered.

**Agency Response:** DSS added a clarifying statement to section (1)(D) that addresses family size and income for non-parent caretakers.

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

- Community Legal Aid Society, Inc.

### **FINDINGS OF FACT:**

The Department finds the proposed changes as set forth in the October 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 regarding Child Care Subsidy Program, specifically, to define family size for child care, is adopted and shall be final effective January 11, 2021.

12/17/2020

Date of Signature

Molly K. Magarik, Secretary, DHSS

### **POLICY – AMENDMENT**

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

### **11003.9.3 Defining Family Size for Child Care**

#### **45 CFR 98.20**

~~The people whose **needs** and **income** are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility and the child care parent fee. Therefore, knowing who to include in the determination of family size is an important part in deciding financial eligibility. Rules to follow when considering family size are relationship and whose income is counted.~~

~~In all instances, the people counted together for family size when determining financial eligibility are the same people counted for family size when determining the family's child care parent fee.~~

~~A. Family size is defined as parents (natural, legal, adoptive, step, and unmarried partners with a child in common) and their children under 18 living in the home, will always be included together in the determination of family size.~~

~~EXAMPLE 1: Ms. Brown, a single mother, lives together with her two year old daughter. She is applying for child care as a Category 31, income eligible case. Mrs. Brown and her daughter are a family size of two.~~

~~EXAMPLE 2: Susan Jones and Mark Evans live together as unmarried partners. Susan has a one year old child from a previous relationship. She applies for Category 31 child care. Susan and her child are a family size of two. Mark is not counted. His income is not considered since he is not the father of the child and there is no child in common between Susan Jones and Mark Evans. (NOTE: If Mark Evans admits to being the natural parent of the child, his income is counted and this is a family of three.)~~

~~EXAMPLE 3: Ms. Johnson, a single parent, has three children ages 13, 10, and 5. She works and needs child care for her youngest child who attends preschool. She is applying for Category 31 child care. Even though she needs care for only one child, her family size is a family size of four when looking at financial eligibility.~~

~~EXAMPLE 4: Ms. Green cares for her three year old niece. Ms. Green works and needs child care. Since Ms. Green is not the parent of the child, she is considered a caretaker. Therefore, Ms. Green's income is not counted and she is not included in the family composition. Ms. Green's niece is considered a family size of one and any income attributable to the niece is countable income.~~

~~EXAMPLE 5: Mom and step-dad live with mom's two children, ages two and five, from a previous marriage. Mom and step-dad both work and need child care. Mom, step-dad, and her two children are a family size of four. Step-dad is included.~~

~~EXAMPLE 6: Mom and step-dad live with mom's three year old child from a previous marriage. Step-dad also has a five year old child from a previous marriage living in the home. Mom and step-dad both work and need child care. This family is a family size of four.~~

~~EXAMPLE 7: Mom and her unmarried partner have a child in common. Mom and the unmarried partner also have one child each from previous relationships. Since Mom and the unmarried partner have a child in common the needs and income of each parent will be considered for all three children. This would be a family size of 5. In this example the Child Care Sub system will first build the family together as one AG. If the AG fails the system will break this family down into 3 AG's to determine as many persons eligible as possible. The three AG's would be Mom, unmarried partner and child in common, Mom and child from a previous relationship, unmarried partner and his child from a previous relationship.~~

~~B. Adults who are not the natural, legal, adoptive, or step parent of any of the children under 18 living in the home are not included when determining family size and child care fee.~~

~~EXAMPLE: Mom lives with her grandmother. Mom has two children ages 10 and 6 for whom she needs after-school care. Mom and her two children are considered a family size of three. Grandmother is not included because she is not the parent of the children nor is her income counted.~~

Family size is defined by the individuals who live together and whose needs and incomes are considered together for child care subsidy.

1. The family size includes parents and their children under age 18 who are living in a household together.

A. DSS defines parents as:

- i. Natural birth parents of a child;
- ii. Legal parents of a child as deemed by a court of law;
- iii. Adoptive parents of a child as deemed by a court of law;
- iv. A stepparent of a child; or
- v. Unmarried partners with a child in common.

B. DSS includes in the family size the parent or parents with their natural, legal, adopted, or step-child or children under age 18 who are residing in the same household.

C. DSS groups unmarried partners together in the family size only if they live together and have a child in common residing in the same household.

- i. When DSS groups unmarried partners together, the family size will include:
  - The unmarried partners;
  - The child in common; and
  - Any other child who is the natural, legal, adoptive, or step- child of one of the unmarried partners and residing in the same household.

D. DSS excludes from the family size any adults who are not the natural, legal, adoptive, or step- parent of the child or children in the household, including a caretaker, legal guardian, or unmarried partner who is not the child's parent.

[i. In this type of case:

- The family size will only include the child or siblings in the household; and**
- The income of the excluded adult will not count in determining the parent copayment.]**

E. A parent may receive child care even if there is another adult living in the household who is not included in the family size, such as an unmarried partner who is not the child's parent, a relative, or a friend.

2. DSS uses the earned and unearned income per DSSM 11003.9.1 that is received by the parents and children included in the family size to determine the family's financial eligibility and copayment for child care.

**[3. Examples of family size:**

**A. Mom and dad are married with two children. Both parents are employed and meet the**

financial requirements for child care. This is a family size of four.

- B. Dad and his unmarried partner have a child in common. Both parents are employed. Dad has two children from a previous relationship, and Dad's unmarried partner has one child from a previous relationship. The four children reside in the household. Since there is a child in common, this is a family size of six.
- C. Mom and her unmarried partner have no children in common. Mom is employed and has one child who resides in the household. Mom's unmarried partner is not employed and has two children who reside in the household. Mom is eligible to receive child care for her child only, and this is a family size of two.
  - i. Mom's unmarried partner is not required to care for Mom's child.
  - ii. Mom's unmarried partner is not eligible for child care because the partner does not have a need for care.
- D. Grandfather and grandmother have custody of their grandchild and receive child support for the grandchild. Grandfather is employed, and grandmother is on disability. This is a family size of one.
  - i. Only the child support income received for the grandchild will count when determining the parent copayment.
  - ii. Although grandmother is not working, she is not required to provide care for the child because she is not the child's parent.
- E. Uncle has custody of his nephew and his godchild. Uncle is employed and receives child support for his nephew. Because the children are not related to each other, there are two family size determinations.
  - i. The nephew is a family size of one and only the child support income will count when determining the parent copayment.
  - ii. The godchild is a family size of one and no income will count when determining the parent copayment.]

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

24 DE Reg. 700 (01/01/21) (Final)