

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

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

### FINAL

### ORDER

#### Child Care Subsidy Program

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Cooperating with Child Support*. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Cooperating with Child Support*.

#### Statutory Authority

45 CFR §98.20, *A child's eligibility for child care services*

#### Summary of Proposed Change

**DSSM 11003.4, *Cooperating with Child Support*:** The purpose of this change is to clarify and consolidate all child support sections. There are several policy sections devoted to child support. Consolidating various sections will make the policy more concise and promote better understanding and improve readability of child support rules.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Councils main concern with the proposal is the anemic approach to exempting caretakers from cooperating with the DCSE to secure child support. The Council previously addressed this issue in the context of Food Supplement Program child support cooperation standards. See attached January 30 and April 11, 2008 memos to DSS and final regulation published at 11 DE Reg. 1243 (March 1, 2008).

The current regulation contains the following standards which are being deleted:

11003.4.1 ...Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren).

§11003.4.4. It is the responsibility of the Division of Child Support Enforcement (DCSE) to determine if there is an acceptable reason for refusing to cooperate. ...

**Agency Response:** DSS disagrees that we are taking an "anemic approach to exempting caretakers from cooperating with DCSE". To the contrary, we state that we will presume cooperation until notified otherwise by the Division of Child Support Enforcement (DCSE). DSSM 11003.4.1 is deleted from the DSS policy manual because that is DCSE policy which is explained to applicants by the child support agency. DSSM 11003.4.4 was not deleted; rather it was reworded for clarity. No change to the regulation was made as a result of this comment.

It would be preferable to include an embellished "good cause" for failure to cooperate section akin to that adopted in the above 2008 Food Supplement Program regulation [subsequently repealed by 13 DE Reg. 1336 (April 1, 2010)]. See attachment. The proposed regulation does not even mention the possibility of good cause for refusing to cooperate. It

limits consideration (albeit by DCSE) of whether there is "good faith effort" to cooperate.

Moreover, DSS should advise beneficiaries of the right to invoke the "good cause" exemption. The 2008 regulation contained the following salutary recital:

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

**Agency Response:** Subsequent conversations with DCSE specify that they do not determine "good cause" for failure to cooperate. DCSE does determine if the applicant has made a "good faith effort" to secure child support for the children. As long as a good faith effort has been made on the part of the caretaker DCSE determines that the caretaker has cooperated. DCSE is skilled in conducting interviews to gather this information. They inform the applicant of their rights regarding refusal to cooperate. Because there are a myriad of reasons applicants may be unwilling to disclose information about the absent parent it is more likely that this information will come out during the interview with DCSE. In addition, since DSS has no standing to exempt an applicant from cooperating with the child support agency; it may create frustration if the applicant opens up to DSS then has to repeat the story again to DCSE. Moreover, the majority of our child care clients are not seen in the office and do not have a consistent caseworker. They may be unwilling to disclose sensitive information of this type. No change to the regulation was made as a result of this comment.

Finally, consistent with the Council's 2008 recommendations, it would be preferable for DSS to retain the ultimate authority to determine if "good cause" for failure to cooperate exists. Compare the revised 2008 standard:

When DCSE does not determine there is good cause for refusing to cooperate, DSS will review the case to ensure that good cause does not exist before sanctioning the individual

**Agency Response:** Since 2008, DSS and specifically the Division of Child Support Enforcement (DCSE) has taken into consideration that domestic violence is a major barrier to cooperating with child support and has taken into account the wider criteria which establishes valid reasons for exemptions from cooperation. DCSE is the division charged with making determinations of what criteria is adequate to determine whether a care taker or child may be in danger from the absent parent. They have certain rules that must be adhered to prior to letting DSS know if enough information or cooperation has been collected. No change to the regulation was made as a result of this comment. No change to the regulation was made as a result of this comment.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the May 2011 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Cooperating with Child Support* is adopted and shall be final effective July 10, 2011.

Rita M. Landgraf, Secretary, DHSS

#### **DSS FINAL ORDER REGULATION #11-29 REVISIONS:**

##### **11003.4 Cooperating with Child Support** 45 CFR 98.20

~~As part of the Child Care eligibility process, all applicants cooperate with the Division of Child Support Enforcement to receive spousal support for themselves and child support for the dependent children in their care. As part of this process, applicants and recipients must cooperate, unless a good faith effort is established, in:~~

- ~~1. Identifying and locating absent parents;~~
- ~~2. Establishing paternity for dependent children born out of wedlock; and~~
- ~~3. Establishing support payments and/or other properties for the dependent child.~~

~~The Division of Child Support Enforcement (DCSE) is the single State agency that is empowered to:~~

- ~~1. Establish paternity of and secure support for children born out of wedlock;~~
- ~~2. Secure support from parents who have abandoned or deserted their children; and~~
- ~~3. Enter cooperative arrangements with appropriate courts and law enforcement officials in order to establish support.~~

~~Before approving a Child Care case, DSS will refer applicants to the DCSE to begin the process of securing support payments. While assistance is received, any spousal Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in a Child Care case closure until compliance. Purchase of Care applicants who do not cooperate with or provide requested information to DCSE, will have their Child Care case closed until they cooperate.~~

~~The requirement to cooperate with DCSE covers all Child Care applicants.~~

~~The child support payments are considered income for the purpose of determining financial eligibility and parent fees for Child Care cases.~~

~~All applicants and recipients must be referred to the Division of Child Support Enforcement (DCSE) as a condition of eligibility for child care services.~~

~~Do not delay approval of child care services (if otherwise eligible) while waiting for a response from DCSE. The Division of Social Services will presume cooperation until notified otherwise by DCSE.~~

~~Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in the case being sanctioned. This means the child care case will close until the applicant or recipient has complied with all DCSE requirements.~~

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

~~10 DE Reg. 1007 (12/01/06)~~

#### **11003.4.1 Cooperation Responsibilities RESERVED**

~~Clients must cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility. All families are required to provide sufficient information to permit Delaware to obtain child support on behalf of the family. Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren). It is the responsibility of the client to provide documentation to verify this.~~

~~In order to identify and locate absent parents, establish paternity, and obtain support payments and/or other property, applicants or recipients of Child Care services are required to participate in the following activities, if relevant:~~

~~To appear at an office of DSS or the Division of Child Support Enforcement to provide verbal or written information or documentary evidence known to or possessed by the applicant or recipient;~~

~~To appear as a witness at judicial or other hearings or proceedings;~~

~~To provide information or to attest to the lack of information under penalty of perjury.~~

~~10 DE Reg. 1007 (12/01/06)~~

#### **11003.4.2 Penalties Sanctions for Child Support Non Cooperation**

~~45 CFR 98.20~~

~~Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in a Child Care case closure until compliance. Purchase of Care applicants who do not cooperate with or provide requested information to DCSE, will have their Child Care case closed until they cooperate. Applicants and recipients who do not cooperate with or provide requested information to the Division of Child Support Enforcement (DCSE) will have their child care case closed until DCSE determines they have cooperated.~~

~~10 DE Reg. 1007 (12/01/06)~~

#### **11003.4.3 Curing Child Support Penalties Sanctions**

~~45 CFR 98.20~~

~~To cure the child support sanction, the caretaker will provide sufficient information to permit Delaware to pursue child support collections on behalf of needy children. Once DCSE notifies DSS of cooperation or good faith effort, DSS will remove the sanction.~~

~~10 DE Reg. 1007 (12/01/06)~~

#### **11003.4.4 Good Faith Determination**

~~45 CFR 98.20~~

~~It is the responsibility of the Division of Child Support Enforcement (DCSE) to determine if there is an acceptable reason for refusing to cooperate. When this is determined to exist, the applicant may participate in the Child Care program and will not be required to cooperate in support collection activities. All determinations of good faith effort are the responsibility of the Division of Child Support Enforcement (DCSE). Applicants and recipients for whom DCSE has made a good faith determination may receive child care services without cooperating fully with DCSE.~~

~~10 DE Reg. 1007 (12/01/06)~~

#### **11003.4.5 Enforcement Without the Caretaker's Cooperation RESERVED**

~~When an acceptable reason for non-cooperation exists, DCSE must decide whether or not child support enforcement activities can proceed without risk to the child or caretaker if the enforcement activities do not include cooperation. DSS will ask the applicant if he/she believes that enforcement activities can proceed and will relay that information to DCSE.~~

~~If a DCSE recommendation is to proceed with enforcement activities, DSS will notify the applicant and give the applicant the opportunity to withdraw the application or close the case before enforcement activities begin.~~

~~10 DE Reg. 1007 (12/01/06)~~

#### **11003.4.6 Fair Hearings**

##### **45 CFR 205.10**

Applicants and recipients have the right to request a fair hearing if they disagree with any DSS decision. See DSSM section 5000. DCSE will schedule and conduct fair hearings on issues of non-cooperation and parents good faith efforts to establish paternity and secure child support.

**10 DE Reg. 1007 (12/01/06)**

**14 DE Reg. 1203 (05/01/11)**

**15 DE Reg. 92 (07/01/11) (Final)**