

# 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 11000

### PROPOSED

### PUBLIC NOTICE

#### Defining Relative In-Home Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) to define and explain the requirements for a relative to provide child care services in the child's home.

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, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2022. Please identify in the subject line: Defining Relative In-Home Child Care.

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 Division of Social Services Manual (DSSM) regarding to define and explain the requirements for a relative to provide child care services in the child's home.

#### Statutory Authority

45 CFR 98.2

#### Background

DSS is revising DSSM 11003.5 to provide instruction for DSS staff and the public on the requirements and limitations for an individual to provide relative in-home child care services in a child's home. The revised policy limits in-home child care to DSS-approved Relative Care providers.

#### Summary of Proposal

##### *Purpose*

The purpose of this proposed regulation is to define and explain the requirements for a relative to provide child care services in the child's home.

##### *Summary of Proposed Changes*

Effective for services provided on and after July 11, 2022 Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) to define and explain the requirements for a relative to provide child care services in the child's home.

##### *Public Notice*

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/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 must be received by 4:30 p.m. on May 31, 2022.

#### Fiscal Impact

DSS is adding the regulation to provide clear and accurate directions on identifying an individual who provides relative in-home child care. This procedure is currently in place and there are no new financial responsibilities associated with the regulation.

## POLICY AMENDMENT

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

### 11003.5 Defining Relative In-Home Child Care

Statutory Authority  
45 CFR 98.2

See Administrative Notice: A-7-99 Child Care Issues

~~The Fair Labor Standards Act requires that in-home child care providers be treated as domestic service workers. As a result, DSS must pay these providers the federal minimum wage. Paying the federal minimum wage would make the cost of in-home care disproportionate to other types of care. As a result, DSS has placed a limit on parental use of the in-home care option.~~

~~A. As of July 1994, in-home care has been limited to:~~

- ~~1. families in which four or more children require care, or~~
- ~~2. families with fewer children only as a matter of last resort.~~

~~B. Examples of "last resort" may include:~~

- ~~1. the parent works the late shift in a rural area where other types of care are not available, or~~
- ~~2. there is a special needs child for whom it is impossible to find any other child care arrangement.~~

~~Federal regulations define in-home care as child care provided in the child's own home. In-home care also includes situations where the caregiver and the child share a home.~~

~~EXAMPLE 1: Ms. Jones lives at 100 Main Street in Newark. Ms. Jones goes to Mrs. Johnson's house at 200 Main Street in Newark to provide dependent care for Mrs. Johnson's children. Because in-home care is provided, Ms. Jones must be paid at least the federal minimum wage. Ms. Jones must, therefore, be providing dependent care to at least four children.~~

~~EXAMPLE 2: Ms. Smith and Ms. Kelly live in the same house at 500 DuPont Street in Wilmington. Ms. Smith provides dependent care for Ms. Kelly's only child in this house. The federal minimum wage provisions do not apply. Ms. Smith would receive the established rate for the one child even though the rate is below the federal minimum wage.~~

This policy applies to Relative Care providers who provide care in the children's home.

1. Federal regulations define an in-home child care provider as an individual who provides child care services in the child's own home.
2. The Division of Social Services (DSS) limits in-home child care to Relative Care providers only (refer to DSSM 11006.7 for Relative Child Care requirements).
3. In-home child care in the children's home is limited to Relative Care providers who are:
  - A. Caring for a minimum of four children in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
  - B. Caring for no more than two children under two years of age.
  - C. Caring for the children of one family member. The children must be related as siblings.
  - D. Only providing care during non-traditional hours, such as evening and weekend work hours, that are not normally offered through a licensed child care provider.

**11 DE Reg. 1488 (05/01/08)**

**25 DE Reg. 1012 (05/01/22) (Prop.)**