

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 *Interviews and Authorizing Service*. 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 July 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Interviews and Authorizing Service*.

Statutory Authority

45 CFR §98.11, *Administration under contracts and agreements*

Summary of Proposed Changes

1) **DSSM 11004.2, Interviews**: The purpose of this rule change is to clarify current policy regarding interviews and to remove procedures. The original text is also reformatted to further clarify interview requirements for child care services. The intent of the proposed amendment is to simplify language and improve readability.

2) **DSSM 11004.9, ~~Authorizing Service~~ Authorizing Child Care Services**: The purpose of this rule change is to add program guidelines for authorizing services and to remove procedures. The amended policy states that Purchase of Care (POC) funds cannot be paid for parents/caretakers to provide direct care to their own children in a home or any other child care facility.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

Overall, the proposed regulation is more condensed than the current version and omits illustrations. It also clarifies that parents cannot obtain the subsidy if they are caring for their own children in their own home or facility if the parent provides direct care to the child in that setting. The proposed regulation was published as 14 **DE Reg.** 11 in the July 1, 2010 issue of the *Register of Regulations*. The Councils have the following observations and recommendations.

First, §11004.2.4 authorizes consideration of a "special need" conveyed through "correspondence submitted by a physician or medical professional". The current regulation is more expansive in defining the scope of persons who can submit documentation of a special need. Section 11004.2.B.4.c authorizes the DSS worker to rely on "written documentation from a recognized professional (such as a doctor, social worker, nurse, school counselor, etc) of the special needs". This is superior to the proposed regulation which requires an actual letter (in contrast to

“written documentation”) and is limited to medical professionals. There are many circumstances in which a non-medical professional (e.g. DVR worker; social worker; psychologist) could logically provide the confirmation of a special need.

Agency Response: DSS would like to thank you for comment. The special needs program was revised through the *Administrative Procedures Act* in July 2009 to include the statement “documentation that may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.” The purpose of this revision was to correct the oversight made in 2009 when this section should have been updated to be consistent with other sections of the manual.

Second, in §11004.2.4, DSS may wish to consider amending the first line to read “any other information...such as documentation of travel time or a special need.” Travel time would be relevant to the need for child care in both the employment and school contexts. Merely referencing a “work schedule” or “class schedule” will understate the extent of need which should include travel time.

Agency Response: DSS would like to thank you for your response however the statement will remain as is. Travel time relates to the *amount* of child care needed and is only considered *after* staff has determined there is a need for child care.

Third, §11004.2.4. limits DSS workers to consideration of a “protective need” only if based on a DFS referral: “For a protective need, a referral from Division of Family Services must be submitted.” This may be unduly narrow. We recognize that related regulations [§§11003.7.6 and 11003.7.8] limit consideration of children with protective child care needs to those referred by DFS. The relevant federal regulation [45 CFR 98.20] refers to “an appropriate protective services worker” but does not define the term. As a practical matter, the DSCYF often provides primary case management and other services through contractors (e.g. Child, Inc.; Delaware Guidance). Moreover, there are many victim protection organizations. For example, many police departments have victim advocates. We recommend expanding the scope of persons who can document a “protective need”. Consider the following substitute standard:

A protective need must be based on a referral from the Division of Family Services (“DFS”), authorized DFS contract agency, or victim services personnel employed by law enforcement or non-profit organization.

Agency Response: DSS understands your desire to increase the sources of a protective need referral. However, the Division is not in a position to expand this group of eligibles at this time.

Fourth, §11004.9 includes the following recital: “These children may be able to get another type of child care”. This is somewhat cryptic. If DSS is aware of some other sources of child care assistance in this context, it would be preferable to provide some guidance to workers through a cross reference or note. The Department of Education periodically includes non-regulatory notes in its regulations with cross references to other regulations or resources.

Agency Response: Thank you for your suggestion that we give some guidance to workers through a cross reference or note to the other types of child care available. This statement serves as a reminder that those parents who cannot get child care assistance because they are providing direct care to their own children are not prohibited from receiving child care assistance if their children are placed in another child care setting. DSS has revised the policy as follows:

All child care services must be authorized before parents/caretakers can receive subsidized child care. Parents/caretakers can choose any provider who is either licensed, licensed exempt or self arranged. 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 children may be able to get child care assistance if their children are placed in another child care setting.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the July 2010 *Register of Regulations* should

be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Interviews and Authorizing Service* is adopted and shall be final effective September 10, 2010.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATIONS #10-39
REVISIONS:**

11004.2 Interviews and Necessary Documentation

45 CFR 98.11

~~Complete an interview either over the phone or in person.~~

~~When scheduling an applicant for an interview do so in the following manner.~~

~~A As soon as reasonably possible after the parent/caretaker makes an informal contact set a specific day and time for an interview. Consider the parent/caretaker's schedule and attempt to schedule appointments at parent/caretaker convenience.~~

~~B Advise the parents/caretakers of the information they will need to bring to the interview. At a minimum parent/caretakers should bring:~~

~~1. if employed, current pay stubs covering the 30 days immediately before the date of application or a letter or employer statement (on company letterhead) noting the employer's name, the parent/caretaker's work schedule, earnings, frequency of pay, and start date;~~

~~2. if in training and/or school, a statement from the school/training program with starting and completion dates and days and hours required to attend or a copy of a registration form and class schedule;~~

~~3. any other income information;~~

~~4. any other information which may have a bearing on establishing need, such as:~~

~~a. in cases of a special need for either a child or an adult, parents/caretakers must complete the Special Needs Form;~~

~~b. for a protective need, a completed Division of Family Services Referral; or~~

~~c. written documentation from a recognized professional (such as doctor, social worker, nurse, school counselor, etc.) of the special needs.~~

~~C. Along with appointment information, send and/or give parents/caretakers a child care certificate package and a list of approximately five available contracted providers. Instruct parents/caretakers to select a provider prior to the formal interview. Even though parents/caretakers may ultimately select providers under contract with DSS, provide them with enough information to make an informed choice. Therefore, in all instances, send and/or give parents/caretakers a certificate package and Guide to Quality Child Care booklet. Inform clients that if they fail to provide the DSS Case Manager with a provider within 60 days of eligibility confirmation and noticing, their case will close.~~

~~D. For parents/caretakers who come into the office without a scheduled appointment, conduct the formal interview process that same day if possible. However, the parents/caretakers need to select a child care provider before care can be authorized.~~

~~E Though verification of the appropriate information to establish need is important, the system will authorize Presumptive Child Care service can be authorized for approximately one month while certain information verification is pending. In this case, the system will, give notice of needed information, authorize child care for approximately one month (depending on the date of application) and end date the authorization. If the system does not authorize Presumptive Child Care, parents/caretakers will be given ten days from the date of the initial application to secure and provide the necessary documentation. If the parents/caretakers receive Presumptive Child Care and the initial application date occurs between the first and the ninth of the month, the authorization for care will extend to the end of the current month. If the initial application occurs from the tenth of the month or after, authorization for care will extend to the end of the following month. (For more information on Presumptive Child Care see section 11004.8)~~

EXAMPLE 1: A parent comes into the office on January 6 and needs care to start work beginning January 7. The parent meets eligibility criteria. The system will authorize Presumptive Child Care until January 31 and give the

~~parent until January 16 to provide proof of employment. If by January 16 the parent provides proof, enter the information and verification into the system and run SFU/EDBC. The system will generate a new authorization with the end date of June 30th. If by January 17 the parent fails to provide proof, a DCIS II Child Care Sub-system notice is mailed informing the parent that child care services will end as of January 31.~~

~~EXAMPLE 2: A parent comes into the office on January 12 and needs to start work beginning January 13. The parent meets eligibility requirements. The system will authorize care until February 28 and give the parent until January 22 to provide proof. If by January 22 the parent provides proof, enter the information and verification into the system and run SFU/EDBC. The system will generate a new authorization with an end date of June 30th. If by January 22 the parent fails to provide proof, a DCIS II Child Care Sub-system notice is mailed informing the parent that child care will end as of February 28.~~

Complete an interview either over the phone or in person. Conduct the interview the same day if possible. Parents will need to supply the following verifications:

1. if employed:
 - a. pay stubs for the 30 days before the date of application, or
 - b. a letter or employer statement (on company letterhead) noting the employer's name, telephone number, the parent's/caretaker's work schedule, earnings, frequency of pay, and start date,
2. any unearned income, such as child support, Social Security, and unemployment compensation
3. if in training and/or school:
 - a. a statement from the school/training program with starting and completion dates and days and hours required to attend, or
 - b. a copy of a registration form and class schedule;
4. any other information which will help in determining the need for service, such as documentation of a special need. Documentation of the special need may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so. For a protective need, a referral from Division of Family Services must be submitted.

Parents must be given any information that will help them to make an informed decision regarding their child care services. Provide parents/caretakers with a list of providers and a child care certificate packet as needed. Although verifications are needed, Presumptive Child Care may be opened pending information. Presumptive Care can be authorized for approximately one month, depending on the date of application. (For more information on Presumptive Child Care see DSSM 11004.8).

(Break In Continuity of Sections)

11004.9Authorizing Service Authorizing Child Care Services

45 CFR 98.11

~~Once a case is created, service must be authorized before parents/caretakers can receive subsidized child care. Authorization is both the name for the form (618d) and the process to grant parents/caretakers child care services (see Section 11002.9 for definition).~~

~~Complete a separate authorization for each child who is eligible to receive child care services. Therefore, if there is more than one child in a family who needs service, complete separate authorizations for each child. Complete an authorization by creating one in the DCIS II Child Care Sub-system. Again, as when entering a case, in DCIS II authorization data screens have required data fields which are highlighted. Complete these data fields before proceeding. Follow the rules below in creating authorizations.~~

~~A. Obtain provider information before completing an authorization. This means that if parents/caretakers wish to select a provider by using a child care certificate, they must have the certificate returned before an authorization can be issued.~~

~~B. Parents/caretakers can only choose providers who are either self-arranged, licensed exempt or who can be~~

matched to existing information in the Site Referral function of the DCIS II Child Care Sub-system. If the provider selected has a contract with DSS, this provider will be listed in the DCIS II under the Site Referral section. Access these providers through their site ID# or site search. Finally, if parent/caretakers use a certificate and they select a contracted provider, consider this as contracted care even though the parent/caretaker used a certificate.

G. When parents/caretakers wish to self-arrange child care, ensure the parent submits the information on the Self Arranged Provider Agreement and Registration Form. When parents/caretakers wish to arrange certificate child care, ensure the parent submits the information on the Child Care Certificate Provider Agreement and Registration Form. Send the appropriate form to the Child Care Monitor for CCMIS processing. The monitor will notify the Case Manager when the information is data entered.

D. When the monitor notifies the Case Manager that data has been entered in CCMIS, enter effective and expiration dates on the authorization. Effective dates will always start when service is due to begin. In most cases, service will begin either the same day the authorization is completed or on a date in the near future. However, there may be occasions when service will begin prior to the actual date of the child care interview.

EXAMPLE 1: The TANF parent who self initiates a Food Stamp Employment & Training (FS E&T) training or education component. In this case, make the authorization effective as of the date the parent started the component activity if the parent needed child care for the activity and was financially eligible.

EXAMPLE 2: When a Child Care Case Manager receives a protective referral from Family Services after child care services have already started.

The ending date for the authorization period means the last day for which Case Managers can authorize care. The authorization period can not exceed the recertification date. This is for all categories of care.

As noted above, the ending date will always be the last day of the month of the authorization period.

E. Ensure that service is authorized only for the days and hours that parent/caretakers actually need care. Therefore, only enter the following on the DCIS II Child Care Authorization Detail screens-

1. the appropriate number of days per week that parent/caretakers will need care, for example 1, 2, 3, 4, or 5 days;
2. the appropriate type of care needed, half day (P), full day (X), day and a half (T), or two full days (D) (supervisory approval is necessary for T and D care);
3. whether absent days are paid (absent days correspond to the number of authorized days, however, when care is self arranged, DSS pays only for the days the child attends care). If a client is authorized for 7 days s/he does not receive paid absent days;
4. whether extended care is authorized; and
5. whether school care is authorized.

F. The remaining fields (Category, Waive Fee Reason, Family Size, and Family Income) of the authorization screen are system completed, depending upon the information previously entered. Press the appropriate key to post the authorization in the system. Click the 'save' button. Complete separate authorizations if there are more children who need care.

All child care services must be authorized before parents/caretakers can receive subsidized child care. Parents/caretakers can choose any provider who is either licensed, licensed exempt or self arranged. 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 **[another type of]** 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), 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.

