

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 11002.4 & 11004

FINAL

ORDER

Child Care Assistance

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual regarding Child Care Assistance specifically, *to clarify policy related to determination of eligibility*. The Department's proceedings to amend its regulations 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 proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2018, 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 April 11, 2018, Delaware Health and Social Services/Division of Social Services proposes to amend sections 11004 and 11002.4 of the Division of Social Services Manual to clarify policy related to determination of eligibility.

Statutory Authority

- Child Care Development Fund (CCDF)
- CFR 98.40 - Child Care Development Block Grant

Background

The policy has been amended to explain eligibility criteria for child care in text that will be understandable, and the focus is on eligibility of the child and the parent/caretaker. The amended policy removed information that referenced the Personal Responsibility and Work Opportunity Act of 1996 and the listing of the different child care categories, as this information is not relevant to determination of eligibility.

Purpose

The purpose of this proposed regulation is to clarify policy related to determination of eligibility.

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 proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2018.

Fiscal Impact Statement

This policy change is to clarify the text and formatting of the existing policy and to remove text that is no longer applicable. This policy is currently in place and there are no new financial responsibilities.

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: One commenter was concerned that current regulations do not take into consideration the eligibility status of full-time students.

Agency Response: Child care policy establishes guidelines for all families that apply for assistance. The goal of the Child Care Subsidy Program is to assist families who are unable to pay a part or the full cost of child care. The child care policies currently in place do address education. In order to qualify for child care assistance while obtaining an education, families need to comply with one of the DSS employment and training vendors under the Temporary Assistance for Needy Families (TANF) Program or the Supplemental Nutrition Assistance Program (SNAP).

No changes were made to the regulation as a result of this comments.

Comment: Another commenter had three separate comments.

First, "...the amendment of 11002.4... extends eligibility to children who are in need of protective services, homeless or in foster care; however, it is unclear whether this is irrespective of age or alien status. The regulation would benefit from language clarifying that this group of children is eligible irrespective of age or immigration status, if that is the case."

Agency Response: DSS appreciates your request for clarity regarding the section referencing children in need of protective care, children who are homeless, or in foster care. This section focuses on the eligibility of the children. The first section outlines age and immigration status, while the second section outlines different placement situations. Children would still need to meet the criteria in the first section in reference to their age and immigration status.

Second, Subsection 2 lists the eligibility requirements for parents and Caretakers which includes those who "report a special need". It might be beneficial to cross-reference the definition of "special need" in 11003.7.8.

Agency Response: The agency agrees and the policy was amended to add a cross-reference to policy 11003.7.8 under the "Related policies" section.

Third, "...the proposed language in paragraph 2 indicates that "Parents and caretakers who appears to be eligible may complete a formal application process". Unfortunately, case handlers make mistakes and potential applicants can be erroneously and unnecessarily discouraged from filing applications that would trigger a formal decision and a right to appeal. Some of the eligibility rules are complex (such as alien status) and some aspects of eligibility, such as having a special need, are subjective and not suitable for an informal decision by a case worker. Families who are told they probably not eligible by a case worker are not likely to pursue an application. The policy needlessly and unfairly skews the process against families.

These provisions violate due process requirements and also make erroneous denials of services much more likely. The Councils may wish to recommend that DSS revise the regulation to require an application be processed for each family that asks for services. This would be consistent with other benefits programs and also with due process requirements.

Agency Response: DSS encourages all Delaware residents to apply for available programs offered through the Division. During the interview process all applicants are screened. Case workers are trained to address individual needs and to advise families of any and all available services. The policy further explains the process the worker must take when reviewing informal inquiries leading into the application process.

DSS is pleased to provide the opportunity to receive public comments and appreciates the thoughtful input.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding Child Care Assistance specifically, *to clarify policy related to determination of eligibility* is adopted and shall be final effective April 11, 2018.

Kara Odom Walker, MD, MPH, MSHS
DHSS Secretary
3/20/18

FINAL

11002.4 Determining Persons Eligible for Child Care Assistance

45 CFR 98.20

DSS provides child care services to eligible Delaware families with children who need child care ~~and who are under the age of 13, or children 13 through 18 years of age who are physically or mentally incapable of caring for themselves or who are in need of protective services.~~

~~Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction. For more detailed child care policy on citizenship, aliens and refugee's see DSSM 3024, these policies apply to the Child Care Subsidy Program.~~

~~The Division can provide Child Care services for **eligible** families where there is at least one U.S. citizen, legal alien or qualified refugee in the family. If one member of the family is a U.S. citizen, legal alien or qualified refugee and he/she meets both technical and financial eligibility criteria, Child Care services can be provided. The Division will evaluate non-US citizen cases on an individual basis.~~

~~Non-US citizens referred to the Child Care Subsidy Program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.~~

~~This policy must also be read in accordance with Section 11003, Eligibility Requirements. DSS provides a guarantee for certain forms of Child Care (Categories 11, 12, and 21). This guarantee means that eligible families will receive child care services under these programs. Eligibility for other child care services (Categories 31, 41 and 51) does not come with this same guarantee. Funding for child care services in these programs is capped. Though families may have an eligible child for whom they need care, and though families may meet other requirements of need and income, this does not guarantee that DSS will provide child care. DSS reserves the right for its capped programs to limit, where appropriate, its child care services based on available resources and funding.~~

~~Eligible families generally include:~~

- ~~A. TANF recipients who work, attend school or are participating in TANF Employment and Training activities.~~
- ~~B. Families with low incomes, who work.~~
- ~~C. Families with low incomes who attend a job training or education program as defined in section 11002.9.~~
- ~~D. Families who receive Food Stamps and who must participate in E&T.~~
- ~~E. Families who receive or need to receive protective services through the Division of Family Services.~~
- ~~F. Eligible families with a special need (either a child or parent).~~

1. Eligibility Criteria for Children

A. To be determined eligible for child care services, children must be:

- Under 13 years of age or 13 through 18 years of age and physically or mentally incapable of self-care as determined by a medical professional, and
- U.S. citizens or qualified aliens or non-U.S. citizens referred through the Division of Family Services.

B. Children are also eligible for child care services if they are:

- In need of protective services,
- Homeless, or
- In foster care or awaiting foster care placement.

2. Eligibility Criteria for Parents and Caretakers

A. To be determined eligible for child care services, parents and caretakers must meet at least one of the following requirements:

- Participate in a TANF or Food Benefit Employment and Training program.
- Receive wages from employment.
- Attend approved job training or educational programs.
- Receive protective services from the Division of Family Services.
- Report a special need.

Related policies:

[11003 Determining Technical Eligibility for Child Care Assistance DSSM 11003, 11003.7.8]

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

FINAL

11004 Application Processing Applying for Child Care Assistance

45 CFR 98.1 (b) (1)

~~Any parent/caretaker who expresses a desire for child care services may apply by contacting a DSS office. The process to actually obtain child care services starts when parents/caretakers contact a Case Manager. Consider this an informal inquiry unless or until it results in the completion of a written application.~~

~~An informal inquiry typically involves a parent/ caretaker's phone call or unannounced child care office visit to seek~~

information about eligibility for child care services. Process all informal inquiries by doing a simple review of the parent/caretaker's need in the creation of a child care case in the DCIS II Child Care Sub-system. Following this simple screening, parents/caretakers are told they either appear eligible or ineligible for service. For those applicants who appear to be eligible, proceed with the formal application process, schedule an appointment or send them the application and outline the necessary information to be returned with the signed application. Case Managers will inform those parents/caretakers who do not appear eligible of their right to file a formal application if they still so choose.

During the informal process, no obligation exists to provide parents/caretakers with a written decision of the eligibility finding nor are parents/caretakers able to appeal an informal decision. In either case, however, Case Managers will always conduct or schedule a formal interview for parents/caretakers who appear eligible or those who assert their right to make a formal request.

The formal application process is detailed below, including the requirements for authorizing child care services, the minimum requirements for verifying eligibility information, the standards for determining child care fees, and conditions for when and why a child care case should either continue or close.

Parents and caretakers who are interested in receiving child care assistance may inquire about services by contacting a DSS office.

1. Parents and caretakers may informally inquire about child care eligibility by contacting a DSS office by phone call or unannounced office visit.

2. Each informal inquiry for child care services will be reviewed by a DSS eligibility case worker at the time of inquiry. Parents and caretakers who appear to be eligible may complete the formal application process on the same day as the informal inquiry.

3. Eligibility case workers who are assessing informal child care inquiries shall:

- A. Review each applicant's need for child care based on the information that the applicant provides.
- B. Review current case information in ASSIST Worker Web (AWW), if applicable.
- C. Notify parents and caretakers whether they are potentially eligible for services. A written decision is not required for an informal inquiry.
- D. Inform all parents and caretakers of their right to file a formal application.
- E. Proceed with the formal application process for potentially eligible parents and caretakers on the same day as the informal inquiry.
- F. Provide the applicant with Form 105 "Appointment and Request for Verification" when additional information is needed to complete the eligibility process.

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

21 DE Reg. 808 (04/01/18) (Final)