

**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 Eligibility**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Child Care Eligibility, specifically, *to amend authorization requirements*. 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 October 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 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 December 12, 2018 the Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Services Manual section 11004.9.5 and 11004.12 of the Division of Social Service Manual regarding Child Care Eligibility.

**Statutory Authority**

- 45 CFR 98.21 - Eligibility determination processes
- Child Care and Development Block Grant (CCDBG) Act

**Background**

The Child Care and Development Block Grant Act of 2014, requires authorization of 12 months of child care to any child who is determined eligible to receive subsidized child care and cases may only be closed based on limited changes in household circumstances. In 2014, the Child Care Development Block Grant Act was reauthorized with the focus on safety and continuity of care for children receiving child care subsidy funds. States are required to revise policies to support the requirements.

**Purpose**

The Child Care and Development Block Grant Act of 2014, requires authorization of 12 months of child care to any child who is determined eligible to receive subsidized child care and cases may only be closed based on limited changes in household circumstances. In 2014, the Child Care Development Block Grant Act was reauthorized with the focus on safety and continuity of care for children receiving child care subsidy funds. States are required to revise policies to support the requirements.

*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 October 31, 2018.

**Fiscal Impact Statement**

The policy amendment will have no fiscal impact since the purpose is to revise the requirements of the program. The policy amendment does not require any additional staff, system changes, agency costs, etc.

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

Two commenters offered the following summarized observations:

**Comment:** Both commenters raised concern that the proposed amendment specified DSS case workers must set child

care authorizations for a period of 12 months, unless a limited set of exceptions apply. The suggestion was that the list of exceptions was limiting and does not mention situations involving illness or the need to care for a family member.

**Agency Response:** DSS agrees with the request for additional circumstances to a temporary change regarding situations involving an illness or the need to care for a family member. Additional language has been added to the policy so that there will not be a limit to the situations that may cause a temporary change.

**Comment:** Both commenters agreed that DHSS seeks to close child care cases upon the "death of the case head or of the authorized child." Rather than automatically closing a case upon the death of the case head, DSS should evaluate whether a basis for continued eligibility still exists rather than disrupting services and forcing a new caretaker to reapply for benefits.

**Agency Response:** DSS appreciates the suggestion to evaluate the basis for continued eligibility in the event of the death of the case head. There are operational procedures as well as notification requirements in place based on a change in a household circumstance.

**Comment:** Both commenters were concerned that fluctuations in income would result in the closure of a child care case due to income exceeding 85% of SMI.

**Agency Response:** Policy 11003.9.5 Making Income Determinations states, "If the income is different from pay to pay, use the income from the previous month or the average of the last three months income, whichever is less. This applies for earned and unearned income." A more comprehensive and detailed income policy will be developed in the near future.

**Comment:** Both commenters requested clarification regarding DSS' proposed language related to case closure due to excessive unexplained absences and mailing of Form 330, "Request for Contact". The concern was that DSS should revise this language to make it clear that they must reach out to both families and providers multiple times and notify them of the risk of termination of benefits.

**Agency Response:** DSS appreciates the comments in regards to unexplained absences and closing of child care cases. An operational procedure will be put in place to support the policy.

**Comment:** Both commenters wrote that the 10-day closing notice should cross-reference DSSM 5300, which outlines the requirements for timely and adequate notice. In addition, the proposed language should explicitly require termination notices to include the specific reason(s) for case closure.

**Agency Response:** DSS appreciates the recommendation to cross reference DSSM 5300 in regards to the 10-day closing notice. Notices in the enhanced child care eligibility system will be more specific.

**Comment:** Both commenters suggested that the proposed provisions on ending child care eligibility lacked references to possible barriers to compliance.

**Agency Response:** DSS appreciates your referencing possible barriers and allowing 30 days for families to provide necessary documentation. DSS has in place Presumptive Child Care in which child care may be open before any documentation is received from the applicant. All applicants and recipients of the child care program do have 30 days to return requested verifications to determine eligibility; this can be cross-referenced with Policy 2000.5 Filing Dates and Processing Standards. Another policy that can be cross-referenced is Policy 11004.11 Review/Determination; in this policy there is a list of good cause reasons:

"Good cause can be anything believed to be reasonable, but generally includes things such as:

1. illness;
2. court required appearance;
3. A household emergency (fire, heating problem, family crisis, etc.);
4. lack of transportation; or
5. inclement weather."

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

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

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Child Care Eligibility, specifically, *to amend authorization requirements* is adopted and shall be final effective December 11, 2018.

11/16/18

Date of Signature

Kara Odom Walker, MD, MPH, MSHS  
Secretary, DHSS

AMENDED

**POLICY – AMENDMENT**

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

**11004.9.5 Establishing 12-Month Authorization for Child Care**

45 CFR 98.21

Families approved for Purchase of Care must be authorized for 12 months of child care.

- 1. DSS case workers must set Purchase of Care authorizations for a 12-month period.**
- 2. Purchase of Care authorizations may be set for a shorter period only if the client provides a written statement verifying the length of time requested for child care. The written statement may be from:**
  - : The parent or caretaker;
  - : A medical professional verifying the length of time child care is required for a special need;
  - : The Delaware Division of Family Services (DFS) verifying the length of time child care is needed to prevent child abuse or neglect.
- 3. Purchase of Care authorizations must continue during the following circumstances:**
  - : The child turns 13 years old during the authorization period;
  - : The child is temporarily out of state;
  - : The parent or caretaker experiences a temporary change in work, education, or training, including[, but not limited to:
    - i. an An] injury resulting in time off of work,
    - [ii. a A] break from approved educational study, or
    - [iii. a A] transition from past employment to new employment[;];
  - Any other temporary circumstance in a household that will not exceed 90 days.]**

AMENDED

**POLICY – AMENDMENT**

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

**11004.12 Closing Child Care Cases**

~~A parent/caretaker's authorization for service should end when any of the following occurs:~~

- ~~A. the parent/caretaker need no longer exists,~~
- ~~B. the parent/caretaker's income exceeds income limits,~~
- ~~C. the parent/caretaker fails to pay the child care fees or fails to make arrangements to pay past fees owed,~~
- ~~D. the parent/caretaker refuses to provide requested information or verification of eligibility,~~
- ~~E. the parent/caretaker is a Food Stamp Employment & Training (FS E&T) participant who is sanctioned,~~
- ~~F. a protective case fails to follow the Division of Family Services case plan,~~
- ~~G. at the request of the parent/caretaker,~~
- ~~H. if program funds should be reduced, and,~~
- ~~I. if a parent/caretaker is a TANF child care participant who is sanctioned.~~

~~When closing cases, send the appropriate closing notice which provides a ten day notice. DSS programmed the DCIS II Child Care Sub-system to allow for ten day notice before an authorization closes, and informs the participant of his/her right to a Fair Hearing.~~

~~When a case and the authorization is closed the system will end date the case and authorization the last day of the current month or the next month if 10 day notice can not be given.~~

45 CFR 98.21 (a)

This policy applies when DSS ends child care eligibility and authorization for services.

**1. DSS will close child care cases prior to redetermination or during graduated phase-out due to:**

- : Excessive unexplained absences of the child from the child care site;
- : A permanent change in the child's residency;
- : The family's income exceeding 85% of the state median income (SMI);
- : Substantiated fraud or intentional program violations;
- : A written request to close the case or to authorize child care for a specific length of time (see DSSM 11004.9.5); or
- : The death of the case head or of the authorized child.

**2. DSS case workers must complete the following steps prior to closing child care cases for excessive unexplained absences:**

- : Mail Form 330 "Request for Contact" to the parent or caretaker to request clarification regarding the child's absences;
- : Close the child care case if the parent or caretaker does not contact the DSS office by the requested due date.

**3. The DSS eligibility system will:**

- : Provide a 10-day closing notice informing the parent or caretaker of their right to a fair hearing;
- : End date the authorization on the last day of the current month. If a 10-day notice cannot be given, the authorization will end on the last day of the next month.

Note: Excessive unexplained absence is defined as 10 or more unexplained absences per month.

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

22 DE Reg. 505 (12/01/18) (Final)