

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

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

### FINAL

### ORDER

#### 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 *Special Needs*. 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 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2009 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 Program policies in the Division of Social Services Manual (DSSM) regarding *Special Needs*. The purpose of this change is to clarify policy for individuals with special child care needs.

#### Statutory Authority

- 45 CFR Part 98, *Child Care and Development Fund*
- 45 CFR §98.20, *A child's eligibility for child care services*

#### Summary of Proposed Change

**DSSM 11003.7.8, *Special Needs***: The changes clarify and improve the readability and usability of the rule regarding child care services for eligible children with special needs. This includes removing examples and outdated language.

#### 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 observations and recommendations summarized below. DSS has considered each comment and responds as follows.

First, the Division is deleting all four examples which appear in the current regulation. The Division may wish to consider retention of some examples. Examples two and three could be retained since one addresses the special needs of a caretaker and the other addresses the special needs of a child. In other contexts (e.g. Section 11003.9.3), the Division includes eight clarifying examples, which are instructive to agency workers and applicants.

**Agency Response**: The examples were removed from the policy because with the policy rewritten for clarification, there is no need for them. The examples were confusing, and over time become inaccurate and misleading.

Second, DSS is deleting a cross reference on waiver of fees: "See section 11004.7 to determine eligibility for waiving the parent fee." Since children with special needs are considered a priority under 45 C.F.R. 98.44(b), DSS may wish to consider retaining the cross reference to facilitate positive eligibility determinations.

**Agency Response:** The section under revision is about Special Needs Childcare and in no way addresses waiving of fees. You cited 45 CFR 98.44(b) which addresses priority of care which is unrelated to waiving of fees. Because the receipt of Special Needs Care does not equate to waiving of any fees it is appropriate to remove that reference.

Third, a regulation contains the following sentence: "If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child requires care that cannot be provided in a regular day care." This is not accurate. For example, parents do not have to demonstrate that a 13-18 year old child's needs cannot be met in a regular day-care setting. See "Children with Special Needs" section. Moreover, it may not be age-appropriate to place a 16-17 year old in a "regular day care" even if a day care were willing to mix populations.

**Agency Response:** Your last comment addresses an inaccuracy in the statement, "If the parent/caretaker meets the need criteria listed in 111003.8, the family will not be eligible for Special Needs Child Care unless the child requires care that cannot be provided in a regular day care." After review, DSS agrees that there is an inaccuracy in the statement and has made the following revision to clarify the text:

"If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child under age 13 requires care that cannot be provided in a regular day care."

#### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the May 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Special Needs* is adopted and shall be final effective July 10, 2009.

Rita M. Landgraf, Secretary, DHSS

#### **DSS FINAL ORDER REGULATION #09-24 REVISION:**

##### **11003.7.8 Special Needs Children**

~~The designation of special needs impacts both eligibility and parent fees.~~

~~See section 11004.7 to determine eligibility for waiving the parent fee.~~

##### **Eligibility**

~~A family can be eligible for Child Care for a child that is between ages 13 and under 19 if the child has a special need that requires child care. This would mean the child is unable to care for himself physically or emotionally, or Division of Family Services (DFS) has referred the child for care due to a protective need.~~

~~Families with special needs children or adults must meet the need for services and income eligibility.~~

~~EXAMPLE: A financially eligible family with two working parents requests child care for their 14 year old child with Downs Syndrome. The 14 year old is incapable of caring for himself due to the Downs Syndrome. They would be eligible for Child Care due to the special needs of the child.~~

~~The special need of a child or an adult that directly results in the need for child care can in itself be the need for care when determining eligibility as long as they meet financial eligibility.~~

~~EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their 12 month old child with a developmental delay. In this case if it is verified that the child needs child care services to assist in increasing the development of the child, they would be eligible.~~

~~EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their two children ages 2 and 4. The mother was involved in a car accident and is unable to get out of bed. The special need of this mother would be the need for care.~~

~~All special needs for both the child and adult must be verified by using the Special Needs form.~~

~~Special circumstances within a family may be considered on a case by case basis when determining the need for child care. These cases must be approved by the Child Care Administrator.~~

~~EXAMPLE: Two older grandparents have custody of their 4 yr. old grandchild. The grandmother is unable to care for the child due to health reasons and the grandfather would like to look for work. There is no need for care since the grandfather is in the home. The circumstances of this four year old could qualify the grandparents for special needs child care. In this case still try to get a special needs form filled out that would address the 4 yr. olds need to be in a day care setting with other children to enhance the child's social and emotional development.~~

~~Division of Family Services~~

~~DFS cases meet the need for service due to the DFS referral. DFS cases do not need to meet financial eligibility. DFS cases that are non citizens and do not meet our citizenship criteria are eligible for services due to the DFS referral. DCIS II Child Care Sub system would place these cases in Category 51.~~

~~Parent fees may be waived for DFS cases on a case by case basis, with supervisory approval.~~

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

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

45 CFR 98.20

### Eligibility

Families requesting Special Needs Child Care must be technically and financially eligible.

**EXCEPTION:** DFS referrals do not have to meet financial criteria.

If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child **[under age 13]** requires care that cannot be provided in a regular day care.

To be eligible for Special Needs care the parent/caretaker or child must meet the definition of need as explained below.

### **Children with Special Needs:**

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's physical, medical or emotional condition is such that he is unable to care for himself. Children under age 13 may qualify for Special Needs Child Care if they have a need that cannot be met in a regular day-care setting. Children 13 years of age and older are only eligible for Special Needs Childcare.

Documentation of the condition 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.

### **Adults with Special Needs:**

A parent/caretaker may be eligible for Special Needs Child Care services if the parent has a condition which makes the parent/caretaker unable to care for his/her child.

Documentation of the condition 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.

### **Families with Protective Child Care Needs**

Children referred by the Division of Family Services (DFS) may be eligible for Special Needs Child Care.

A child that is active with and referred by DFS for child care:

1. is considered to have met the need criteria;
2. does not have to meet the financial criteria;
3. may receive child care regardless of citizenship status.

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

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

**13 DE Reg. 97 (07/01/09) (Final)**