

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, as it relates to the determination of need for child care. 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 April 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, as it relates to the determination of need for child care.

Statutory Authority

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996;
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41); and,
- 45 CFR, Part 98, Subpart C, Eligibility for Services.

Summary of Proposed Change

DSSM 11003.8, Necessity of Child Care: This rule revision removes the language (and related text) that negates the need for child care if there is another responsible and capable adult in the household who could care for the child. Only parents are legally obligated to care for their child.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizen's (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:

As background, the Child Care Subsidy Program is designed to supplement the care children receive from their parents when the parents work, parent(s) participate in an employment and training program, parent(s) have a special need requiring absence from the home, or the children need to be protected from abuse/neglect. See attached 16 **DE Admin. Code** §11002.2.

The proposed amendment expands eligibility. The current standard disallows eligibility if there is another "responsible and capable adult in the household (such as another family member)". DSS proposes to delete this limitation based on the rationale that "only parents are legally obligated to care for their child."

Parenthetically, we note that similar issues are presented in the Medicaid program when a parent seeks private duty nursing or personal assistance for a child with a disability. MCOs have historically manifested

reluctance to fund such services based on a vary narrow view of parental justification and need.

The Councils endorse the proposed regulation since it favors eligibility and recognizes that parents cannot "force" other adults in a household to care for children.

Agency Response: Your participation is appreciated. Thank you for your endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the April 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the Child Care Subsidy Program, as it relates to the determination of need for child care is adopted and shall be final effective June 10, 2008.

Vincent P. Meconi, Secretary, DHSS, May 15, 2008

DSS FINAL ORDER REGULATIONS #08-20 REVISIONS:

11003.8 Necessity of Child Care

For parent/caretakers to receive child care services, DSS will need to consider whether child care is necessary. Child care will be considered necessary when:

- A. the child is not in school during the hours of the parent/caretaker's employment; or
- B. the child is not in school during the hours of the parent/caretaker's participation in a training or education component of a DSS Food Stamp or TANF Employment and Training program; or
- C. **both** parents in a two parent household have a need for child care. For example:
 - 1. in two parent households both parents work; or
 - 2. one works and the other has another need (such as education or training), is incapacitated (a parent who needs to participate in in-patient rehabilitation is included in the meaning of incapacitated) or is unavailable (such as one parent works the late shift and needs to sleep during the day while the other parent works); or
- ~~D. there is no other responsible and capable adult in the household (such as another family member).~~

~~DSS will make an exception in the last case if the other adult household member is incapacitated, the child is at risk of abuse, or the age or disposition of the other adult makes it unlikely to expect him/her to provide care (such as grandparents are not required to provide care if they are not inclined to do so on their own).~~

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

11 DE Reg. 1657 (06/01/08) (Final)