

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** 11003.7.8 & 11003.8

FINAL

ORDER

Child Care Subsidy Program, DSSM 11003.7.8 and 11003.8

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 and Necessity of 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 2011 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 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

As a reminder, the proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding Special Needs and Necessity of Child Care.

Statutory Authority

45 CFR §98.20, A child's eligibility for child care services

Summary of Proposed Changes

DSSM 11003.7.8, Special Needs: The Special Needs rule is being revised by eliminating Special Needs for children and maintaining it for adults.

DSSM 11003.8, Necessity of Child Care: This section is being revised to clarify what constitutes a need for child care. Parents and caretakers must have a need as defined by the Division of Social Services in order to receive subsidized child care. In the case of a two-parent family both parents must have a need.

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. The Division of Social Services (DSS) has considered each comment and responds as follows.

Upon initial review of the regulation, it appeared that the main thrust of the initiative is to completely eliminate standards allowing special needs children to be eligible for the Child Care Subsidy Program. For example, the "Summary of Proposed Changes" section recites as follows: "The Special Needs rule is being revised by eliminating Special Needs for children while maintaining it for adults." Moreover, the following authorization is being stricken altogether:

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 daycare setting. Children 13 years of age and older are only eligible for Special Needs Childcare.

Consistent with the attached 45 C.F.R. §98.20, DSS has the discretion to cover or not cover such children:

(a) In order to be eligible for services under §98.50, a child shall:

(I) Be under 13 years of age; or

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself of herself, or under court supervision; ...

Agency Response: DSS is not eliminating the standards allowing children with special needs to be eligible for the Child Care Subsidy Program. The Division is revising its eligibility criteria so that a child with a special need must have a parent or caretaker with a DSS qualifying need before services will be approved. Children with special needs between the ages of 13 through 18 will continue to receive Special Needs services as long their parent/caretaker has a DSS qualifying need. In addition, children with special needs under the age of 13 may be eligible if the parent/caretaker meets the financial and technical criteria.

Secondarily, the regulation ostensibly narrows the “necessity of child care” standards for two-parent households. See proposed changes to §11003.8.

Agency Response: The policy is revised to clarify that, for two-parent families, both parents must have a need before child care will be approved.

SCPD appreciates the participation of the DSS Division Director at its April 18 meeting, but opposes the regulation in its current form. It would be preferable for DSS to republish a more informative revised regulation. Moreover, if DSS intends to eliminate “special needs for children” status, there are multiple inconsistent regulations.

Agency Response: Thank you for your observation concerning the inconsistencies in the policy. We will make the appropriate changes to bring consistency to all cited policy sections as expeditiously as possible.

Finally, since the program is partially funded by a federal block grant, it is possible that the Division has provided written assurances in its application that it covers special needs children. If so, DSS could potentially violate grant assurances by changing standards “midstream”.

Agency Response: It is true the policy is partially funded by a federal block grant. However, the CCDF plan may be amended at any time with approval from the Administration of Children and Families. A general practice is to amend the plan within 90 days after policy has been approved.

Further analysis by Division staff resulted in changes to the rule as proposed at DSSM 11003.7.8. Language is inserted to further clarify/change expectations as follows.

[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 parent/caretaker has a need and is financially eligible. The child’s physical, medical or emotional condition must be such that the child is unable to care for himself or herself.

A child that is younger than 13 years of age who has a special need may be eligible for care if the child’s parent/caretaker has a need and is financially eligible.

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.]

[Bracketed Bold language] indicates added text at the time the final order is issued.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2011 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 and Necessity of Child Care is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATIONS #11-24
REVISIONS:**

11003.7.8 Special Needs

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.~~

The parent/caretaker must meet the need criteria as listed in 11003.8.

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 daycare 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/caretaker has a condition which makes him/her ~~the parent/caretaker~~ unable to care for his/her child for some portion of the day.

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.

[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 parent/caretaker has a need and is financially eligible. The child's physical, medical or emotional condition must be such that the child is unable to care for himself or herself.

A child that is younger than 13 years of age who has a special need may be eligible for care if the child's parent/caretaker has a need and is financially eligible.

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.

Families with Transitional Work Program Needs:

Children referred by the Transitional Work Program (TWP) may be eligible for Special Needs Child Care.

A parent/caretaker that is active with and referred by TWP for child care:

1. is considered to have met the need criteria;
2. must have gross household income at or below 200% FPL;
3. is not required to provide a Medical Certification Form or a Special Needs Form.

DSS staff will authorize childcare for 5 days part time with extended care. Please refer to policy section 11004.9 Authorizing Service. Authorize care for additional time if the parent's/caretaker's activities with TWP require more than part time care.

11003.8 Necessity ~~Of~~ 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).~~

45 CFR 98.20

For parents/caretakers to receive child care services, DSS must determine if child care is necessary. For two-parent households, both parents must have a need for child care. Child care is necessary when:

- A. The child is not in school during the hours of the parent's/caretaker's employment
- B. The child is not in school during the hours of the parent's/caretaker's participation in a training or education component of a DSS Employment and Training program
- C. The child is active with and referred by DFS for child care (See DSSM 11003.7.8)
- D. The parent/caretaker is active with and referred by the DSS Transitional Work Program for child care (See DSSM 11003.7.8)
- E. The parent/caretaker has a special need (See DSSM 11003.7.8)

14 DE Reg. 1375 (06/01/11) (Final)