Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

REVISION OF THE REGULATION OF DELAWARE'S DIVISION OF SOCIAL SERVICES MANUAL (DSSM) 11003.4, 11003.4.2, 11003.4.3, 11003.4.4, 11003.4.6, 11003.4.7, 11004.2.1 and 11004.11 Child Care Subsidy Program, Child Support Policies and Procedures

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures*. 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 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced January 31, 2015 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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures*.

Statutory Authority

45 CFR §98.1, *Goals and purposes*
45 CFR §98.20, *A child's eligibility for child care services*
45 CFR §205.10, *Hearings*

Background

Delaware Health and Social Services ("DHSS")/Division of Social Services ("DSS") is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

The Child Care and Development Fund ("CCDF") Block Grant Act of 1990, as amended, 42 USC § 9858b (b)(1)(A), (the "Act") requires the Lead Agency to "administer, directly, or through other governmental or non-governmental agencies" the funds received. The regulations at 45 CFR 98.11 provide that, in addition to retaining "overall responsibilities" for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

Summary of Proposed Changes

The Division of Social Services (DSS) is removing and amending child support rules that require a client to cooperate with the Division of Child Support Enforcement (DCSE) as a condition for eligibility for subsidized child care services. The current rule creates unintended delays and barriers to accessing child care services to low income working families seeking assistance.

There are a number of valid reasons that lead parents to decide not to pursue formal child support services. Many parents have informal agreements that establish the non-custodial parent will assist the custodial parent in supporting their children in common. Sometimes those agreements include cash payments to the non-custodial parent at other times support is made in the form of non-cash assistance such as paying specific bills, providing services, or purchasing items needed by the family. Mandating child support cooperation or court involvement is seen by many custodial parents as potentially jeopardizing the relationship that has been forged with the non-custodial parent and as a threat to relationship between the non-custodial parent and their children. Additionally there are circumstances when parents decide not to pursue child support services for fear of retributions from the absent parent; this is often the case in domestic violence situations even though parents may request good cause for non-cooperation with child support enforcement. In these cases, employment or appropriate care of children can be put in jeopardy. Whatever the immediate reason for not accessing services through DCSE, these families have the option of pursing assistance though DCSE on a volunteer basis at any time.

The following policy sections in the Division of Social Services Manual (DSSM) are affected by the proposed changes:

DSSM 11003.4, ~~*Cooperating with Child Support*~~ RESERVED

DSSM 11003.4.2, ~~*Sanctions for Child Support Non Cooperation*~~ RESERVED

DDSM 11003.4.3, ~~*Curing Child Support Sanctions*~~ RESERVED

DSSM 11003.4.4, ~~*Good Faith Determination*~~ RESERVED

DSSM 11003.4.6, ~~*Fair Hearings*~~ RESERVED

DSSM 11003.4.7, ~~*Child Support Enforcement Procedures*~~ RESERVED

DSSM11004.2.1, *Conducting the Interview*

DSSM 11004.11, *Review/Determination*

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

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

GACEC

The Division of Social Services (DSS) is removing and amending child support rules that require a client to cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility for subsidized child care services. The current rule creates unintended delays and barriers to accessing child care services to low income working families seeking assistance. GACEC **endorses** the proposed amendment since the Child Care Subsidy Program is an important support service for individuals enrolled in vocational training or engaging in employment.

GACEC would also like to share one minor observation. Section 11004.11 refers to a six month interim report. We did not identify any other references to a six-month report within Chapter 11000. DSS may wish to access whether the six-month report is still current practice.

SCPD

Historically, participants have been required to cooperate with the Division of Child Support Enforcement as a condition of eligibility. The Division is proposing to delete all regulations requiring such cooperation. Justification includes the following: 1) elimination of delays in accessing child care services; 2) undermining informal arrangements in which non-custodial parents provide supports; and 3) fear of retribution in domestic violence situations.

SCPD **endorses** the proposed regulation. The Child Care Subsidy Program is an important support service for individuals enrolled in vocational training or engaging in employment. Council has only one minor recommendation. Section 11004.11 refers to a six month interim report. SCPD did not identify any other references to a 6-month report within Chapter 11000. DSS may wish to assess whether the 6-month report is still current practice. If it is, the Division may wish to revise the following sentence: "Only child care/food benefit cases will receive an interim report." SCPD suspects that the word "receive" should be "require".

Agency Response: To clarify that the six-month interim report is current practice, DSS inserted the DSSM section number (DSSM 9068.1) as reference in Section 11004.11 and changed the word "receive" to "require". We further clarified the seventh paragraph of Section 11004.11 by inserting the title of the section (Prioritizing Service Needs). DSS appreciates and thanks both councils for the endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures* is adopted and shall be final effective March 10, 2015.

February 16, 2015
Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #15-03
REVISION:

11003.4 ~~Cooperating with Child Support~~ RESERVED

~~45 CFR 98.20~~

All applicants and recipients must be referred to the Division of Child Support Enforcement (DCSE) as a condition of eligibility for child care services. Do not delay approval of child care services (if otherwise eligible) while waiting for a response from DCSE. The Division of Social Services will presume cooperation until notified otherwise by DCSE.

Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in the case being sanctioned. This means the child care case will close until the applicant or recipient has complied with all DCSE requirements.

(Break in Continuity of Sections)

11003.4.2 Sanctions for Child Support Non Cooperation RESERVED

45 CFR 98.20

Applicants and recipients who do not cooperate with or provide requested information to the Division of Child Support Enforcement (DCSE) will have their child care case closed until DCSE determines they have cooperated.

11003.4.3Curing Child Support Sanctions RESERVED

45 CFR 98.20

Once DCSE notifies DSS of cooperation or good faith effort, DSS will remove the sanction.

11003.4.4 Good Faith Determination RESERVED

45 CFR 98.20

All determinations of good faith effort are the responsibility of the Division of Child Support Enforcement (DCSE). Applicants and recipients for whom DCSE has made a good faith determination may receive child care services without cooperating fully with DCSE.

(Break in Continuity of Sections)

11003.4.6 Fair Hearings RESERVED

45 CFR 205.10

Applicants and recipients have the right to request a fair hearing if they disagree with any DSS decision. See DSSM section 5000. DCSE will schedule and conduct fair hearings on issues of non-cooperation and parents good faith efforts to establish paternity and secure child support.

11003.4.7 Child Support Enforcement Procedures RESERVED

1. At the eligibility interview, the DSS worker will explain the client's responsibilities in relation to securing support and the circumstances that are acceptable for refusal to cooperate. The applicant and worker will sign Form 204. A copy of Form 204 will be given to the applicant.

2. At the time of application, if applicants have at least the minimum information required for child support case initiation, DSS staff should initiate the child support case via the computer. DSS assumes cooperation unless otherwise notified by DCSE.

An interview with the DCSE is waived in the following cases:

a) Child Care cases where there are no children with absent parents;
b) Child Care cases where deprivation is based on incapacity;
c) Child Care cases in which an acceptable reason for non-cooperation has been determined by DCSE;
d) Child Care reapplications where the caretaker has previously cooperated with the Division, and the absent parents involved in the case are the same individuals that were involved when the case was previously open.

~~3. When the DCSE indicates that the caretaker has been uncooperative, the Child Care case is closed.~~

~~4. The client is responsible for proving necessary verifications to DCSE.~~

(Break in Continuity of Sections)

11004.2.1 Conducting the Interview

The interview will include:

A. ~~an~~ An evaluation of parents/caretakers need for child care services (see Section 11003);

B. ~~a~~ A determination of financial eligibility as needed;

C. ~~an~~ An assessment of the family's child care needs as well as the needs of the ~~child(ren)~~ children to be placed in care;

~~D. an explanation of the Child Support Cooperation requirement;~~

~~E~~ D. ~~an~~ An explanation of the available types of child care; the choices parents/caretakers have regarding these provider types; the various provider requirements regarding licensure, possible co-pays, health, and safety, including record of immunization; and required child abuse and criminal history checks;

~~F~~ E. ~~an~~ An explanation of DSS payment rates and parent fee scale, including a discussion of how fees are assessed, where fees are to be paid, what happens if the fee is not paid, and how parents/caretakers are to keep DSS informed of changes that affect fees;

~~G.~~ F ~~an~~ An explanation of parents/ caretakers rights and responsibilities;

~~H.~~ G. ~~completion~~ Completion of the Application for Child Care Assistance, and as applicable completion of the Child Care Authorization and the Child Care Payment Agreement form; and

~~I.~~ H. ~~verification~~ Verification of appropriate information establishing need and income.

The entire process, from the time when parents/caretakers make an informal request for child care to the time when a decision is finally made, should take no longer than one month.

Parents/caretakers who fail to keep their initial appointment for an interview are given the opportunity to reschedule.

(Break in Continuity of Sections)

11004.11Review/Determination

45 CFR 98.1

All childcare applicants and recipients are continuously eligible for child care services for twelve months. This means that the applicants and recipients remain eligible for child care services unless:

A. The child moves out of or is removed from the parent's/caretaker's home, or

B. The child moves out of state, or

C. The child is deceased~~, or.~~

~~D. The parent/caretaker does not cooperate with child support requirements~~

In the event of any of the above, close the child care case.

Additionally, the child care parent fee will not change during the authorization unless the parent/caretaker in a single parent home loses his or her job or one or both parents in a two parent home loses his or her job. (See DSSM 11004.12.1 Continuing Child Care after Loss of Need.)

Complete a review/redetermination of the circumstances of each parent/caretaker at least once every twelve months and just prior to the end of each authorization period.

Close the child care case if parents/caretakers fail to complete a review or return the six month interim report **[(See DSSM 9068.1 12-Month Certification Periods)]**. Only child care/food benefit cases will **[~~receive~~ require]** an interim report. If the parents/caretakers provide good cause for their failure to complete or return the report, the case should be processed.

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

1. ~~Illness~~ Illness;

2. ~~court~~ Court required appearance;

3. ~~a household~~ Household emergency (fire, heating problem, family crisis, etc.);

4. ~~lack~~ Lack of transportation; or

5. ~~bad~~ Inclement weather.

Parents/caretakers whose child care cases close because they failed to complete a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1 **[Prioritizing Service Needs]**).

Do not allow an authorization to end or close a case without first ensuring the parents/caretakers were given timely and adequate notice.