

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** 11000

FINAL

ORDER

Defining Relative In-Home Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding, Defining Relative In-Home Child Care, specifically, to define and explain the requirements for a relative to provide childcare services in the child's home. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the May 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2022, 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 July 11, 2022, the Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) to define and explain the requirements for a relative to provide childcare services in the child's home.

Statutory Authority

The purpose of this proposed regulation is to define and explain the requirements for a relative to provide childcare services in the child's home.

Background

DSS is revising DSSM 11003.5 to provide instruction for DSS staff and the public on the requirements and limitations for an individual to provide relative in-home childcare services in a child's home. The revised policy limits in-home childcare to DSS-approved Relative Care providers.

Purpose

The purpose of this proposed regulation is to define and explain the requirements for a relative to provide childcare services in the child's home.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DSS gave public notice and provided an open comment period for 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 May 31, 2022.

Fiscal Impact Statement

DSS is adding the regulation to provide clear and accurate directions on identifying an individual who provides relative in-home childcare. This procedure is currently in place and there are no new financial responsibilities associated with the regulation.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) would like to reiterate concerns that were shared when the regulations were revised in 2018 and request information on why the regulations only apply to families with at least four children.

Agency Response: DSS appreciates your observations and recommendations regarding the proposed policy. The proposed policy is being amended to clearly define relative in-home care.

Families requesting "special needs" for their children are reviewed on a case-by-case basis. When all eligibility requirements are met, the relative may care for the child outside of the non-traditional hours as notated in policy. DSS is

aware that many families have "special needs". DSS prides itself on determining eligibility on a case-by-case basis for these families, and children with disabilities are no exception. For their safety and well-being, children with "special needs" will continue to be determined eligible on a case-by-case basis. DSS will amend the language in this policy and policy 11006.7 Determining Relative Child Care to reflect the fact that "special needs" children are determined eligible on a case-by-case basis.

DSS policy 11003.5 regarding in-home care has been revised to address your concerns and is being submitted for final publication. The policy will now allow a provider to care for a minimum of one child and a maximum of five children in the child's home. Again, DSS will determine eligibility for "special needs" or other extenuating circumstances on a case-by-case basis.

Comment: The State Council for Persons with Disabilities (SCPD) has reviewed the proposed revisions. Of significant concern to SCPD is that DSS appears to be restating the provisions limiting Relative In-Home Care to families with four or more children and eliminating the "last resort" exception to the role for special needs children when other childcare cannot be found.

Agency Response: DSS appreciates your observations and recommendations regarding the proposed policy. The proposed policy is being amended to clearly define relative in-home care.

Families requesting "special needs" for their children are reviewed on a case-by-case basis. When all eligibility requirements are met, the relative may care for the child outside of the non-traditional hours as notated in policy. DSS is aware that many families have "special needs". DSS prides itself on determining eligibility on a case-by-case basis for these families, and children with disabilities are no exception. For their safety and well-being, children with "special needs" will continue to be determined eligible on a case-by-case basis. DSS will amend the language in this policy and policy 11006.7 Determining Relative Child Care to reflect the fact that "special needs" children are determined eligible on a case-by-case basis.

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

- Governor's Advisory Council for Exceptional Citizens (GACEC)
- State Council for Persons with Disabilities (SCPD)

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the May 2022 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 Del.C. §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding Defining Relative In-Home Child Care, specifically, to define and explain the requirements for a relative to provide childcare services in the child's home, is adopted and shall be final effective May 11, 2023.

3/29/23

Date of Signature

Molly Magarik, Secretary, DHSS

POLICY AMENDMENT

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

11003.5 Defining Relative In-Home Child Care

Statutory Authority

45 CFR 98.2

See Administrative Notice: A-7-99 Child Care Issues

~~The Fair Labor Standards Act requires that in-home child care providers be treated as domestic service workers. As a result, DSS must pay these providers the federal minimum wage. Paying the federal minimum wage would make the cost of in-home care disproportionate to other types of care. As a result, DSS has placed a limit on parental use of the in-home care option.~~

- A. ~~As of July 1994, in-home care has been limited to:~~
- ~~1. families in which four or more children require care, or~~
 - ~~2. families with fewer children only as a matter of last resort.~~

B. Examples of "last resort" may include:

1. the parent works the late shift in a rural area where other types of care are not available, or
2. there is a special needs child for whom it is impossible to find any other child care arrangement.

Federal regulations define in-home care as child care provided in the child's own home. In-home care also includes situations where the caregiver and the child share a home.

EXAMPLE 1: Ms. Jones lives at 100 Main Street in Newark. Ms. Jones goes to Mrs. Johnson's house at 200 Main Street in Newark to provide dependent care for Mrs. Johnson's children. Because in-home care is provided, Ms. Jones must be paid at least the federal minimum wage. Ms. Jones must, therefore, be providing dependent care to at least four children.

EXAMPLE 2: Ms. Smith and Ms. Kelly live in the same house at 500 DuPont Street in Wilmington. Ms. Smith provides dependent care for Ms. Kelly's only child in this house. The federal minimum wage provisions do not apply. Ms. Smith would receive the established rate for the one child even though the rate is below the federal minimum wage.

This policy applies to Relative Care providers who provide care in the children's home.

1. Federal regulations define an in-home child care provider as an individual who provides child care services in the child's own home.
2. The Division of Social Services (DSS) limits in-home child care to Relative Care providers only (refer to DSSM 11006.7 for Relative Child Care requirements).
3. In-home child care in the children's home is limited to Relative Care providers who are:
 - A. Caring for a minimum of **[four children one child]** in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
 - B. Caring for no more than two children under two years of age.
 - C. Caring for the children of one family member. The children must be related as siblings.
 - D. Only providing care during non-traditional hours, such as evening and weekend work hours, that are not normally offered through a licensed child care provider.
 - [i. **Children with "special needs" as defined in DSSM 11003.7.8 and newborns will be reviewed on a case-by-case basis for exemption to the non-traditional hours requirement.]**

11 DE Reg. 1488 (05/01/08)

26 DE Reg. 961 (05/01/23) (Final)